# Audit Guide for Consultants

August 1999



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### Foreword

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This second edition of the *Audit Guide for Consultants* has been prepared for use by consulting organizations as a basic primer to better understand the Washington State Department of Transportation (WSDOT) external audit process. Communication of rules, regulations, policies, and procedures used by WSDOT management and the Audit Office can assist firms in understanding the role of the audit organization and how costs are viewed by the auditors.

While much of what is included in the manual is directed toward engineering and architecture firms doing business with WSDOT, the concepts discussed can be used by other types of organizations.

Updating the guide is a continuing process and revisions will be issued periodically. Questions, observations, and recommendations are invited. For clarification of the content of the manual, contact the WSDOT Audit Office, External Audit Branch.

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Wayne H. Donaldson Audit Director WSDOT Audit Office

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## Chapter 1 Introduction

Chapter 1 Introduction

WSDOT uses the services of consultants to assist in program delivery. An area that often raises questions for people in the consultant community, and management within the Washington State Department of Transportation (WSDOT), is the area of AUDIT.

Communication of rules, regulations, policy, and procedures can assist individuals in understanding the role of an organization. Providing information relating to audit issues is the primary purpose of this document.

#### **About This Manual**

This manual is intended to be a basic primer for understanding the WSDOT external audit process. To the extent possible, accounting and auditing theory will not be discussed. Numerous books are available which the reader can obtain to learn about those two subjects.

#### Success and Words of Wisdom

Success can be measured in a number of ways. For the WSDOT Audit Office, success may be measured by the impact this manual will have on the readers.

While we cannot say that a firm will be always be successful in dealing with and understanding audit groups, we offer these words:

- Record business income and expenditures in a hand-posted or computerized accounting system.
- Keep time sheets, original invoices, rental agreements, and all source (original) documentation used as a basis for any billing to WSDOT.
- Read and understand the agreement entered into with WSDOT and the implications of the method of payment identified in the agreement and the federal and state criteria cited in the agreement.
- Just because an item of cost is an acceptable business expense by the Internal Revenue Service, doesn't mean it is allowable for reimbursement purposes. For instance, the IRS rate for vehicle mileage is usually higher than the rate allowed by the Federal Acquisition Regulation System (FARS).
- WSDOT uses FARS as a primary basis for determining the allowability, allocability, and reasonableness of incurred costs.

**Note:** By definition, a WSDOT auditor cannot tell an organization how to compile information, or in what specific format. In other words, WSDOT cannot create or establish a firm's accounting system. In theory and practice, the auditors are an objective third party, conducting audits of agreements or contracts entered into between WSDOT management, and public or private organizations.

The information contained in this guide is based on the knowledge and experience of the auditors, the most often asked questions by someone being audited, and the observations of the auditors made while conducting their work.

Included in this guide are examples of schedules, time sheets, ledger sheets, and other accounting type records or documents. These examples are for discussion purposes only. The use of the same format or type of document does not guarantee the acceptance or eligibility of costs.

The following is a summary of topical areas included in this guide.

Chapter 1	Introduction
Chapter 2	Definitions
Chapter 3	Audit Involvement in the Agreement Process
Chapter 4	Using This Guide
Chapter 5	Labor Costs
Chapter 6	Overhead Costs
Chapter 7	Direct Nonsalary Costs
Chapter 8	Fixed Fee
Chapter 9	Subconsultants
Chapter 10	Record Retention for Consultants
Chapter 11	Task Assignment Agreements
Chapter 12	Invoicing WSDOT
Chapter 13	Development of Charge-Out Rates
Chapter 14	Related Party Transactions
Chapter 15	Single Audit Act
Chapter 16	Auditor's Review of Internal Control
Chapter 17	WSDOT Standard Agreements
Chapter 18	Conflict of Interest — Who Me?
Chapter 19	Sole Proprietorships — Wage and Billing Rates
Chapter 20	Billing Rates — AIHR, Sole Proprietor, Partnerships
Chapter 21	Field Office Overhead Rates
Chapter 22	Advance Agreement on Costs
Chapter 23	Resolution Procedures
Chapter 24	Examples of Forms
Chapter 25	Audit Criteria
Chapter 26	FARs Subpart 31 — Contract Cost Principles and Procedures

### Chapter 2 Definitions

Chapter 2 Definitions

The following terms are used throughout this guide. We suggest that the reader become familiar with these terms and the associated WSDOT Audit Office definition.

#### Actual Cost Agreement

The name Actual Cost Agreement does not mean that a consultant will be reimbursed for all actual costs incurred for performing a job. Costs are reimbursed subject to the limitations described in the agreement, contract, or specified criteria. These limitations can be very restrictive. An example is interest on borrowed money. This is a cost of doing business, yet it is not reimbursable as an actual cost of doing business.

#### Actual Costs

Amounts determined on the basis of costs incurred and supported by original source documentation, as compared to forecasted costs, or costs thought to have been incurred, or costs based on historical averages.

#### Administrative Expenses

Costs which are not directly identified with any one item of work, but when taken as a whole, support or contribute to all activities of a firm.

#### Advance Agreement

An understanding included in an agreement by the contracting officer and the consultant as to the treatment of special or unusual costs not already included in FARs. The agreement must be in writing, executed by both the contracting parties, and incorporated into applicable current and future contracts. An advance agreement shall contain a statement of its applicability and duration. See 48 CFR 31.109.

#### Agreement

A contract. A binding, legal, document which identifies the deliverable goods and services being provided, under what conditions, and the method of payment for such services. The document may include federal criteria and state requirements which will have to be adhered to by the state and the consultant. The document will usually indicate start and finish dates, record retention requirements, and other pertinent information relative to the actual work to be performed.

#### All-Inclusive Hourly Rate Agreement

An agreement using an hourly rate developed for billing purposes which may include a firm's actual direct labor cost, overhead rate allowed or negotiated, and negotiated profit margin. Provisional hourly rates generally are temporary and will

be adjusted by an audit. Negotiated hourly rates may be used for the life of an agreement, or may be adjusted from time to time depending on the agreement provisions.

#### Allocable

A cost is allocable (to an agreement or cost of work being performed for the government) if it benefits both the agreement and other work of the firm and the cost can be distributed in reasonable proportion to the benefits of incurring that cost.

#### Allowable (Cost)

An item of cost which can be billed directly as a project cost or indirectly as an overhead cost by the consultant.

#### Audit Cycle

The series of steps auditors go through in completing their assigned work. The process includes a review of a firm's permanent file maintained by the Audit Office, preliminary audit work including scheduling of billed costs, arranging an appointment to conduct the audit, entrance conference, field work, review of a firm's documentation, exit conference, report write up, submittal of draft report to auditee for comment, and issuance of the final report.

#### **Audit Resolution Process**

The process WSDOT management and the auditee go through in resolving audit findings. It may involve negotiation of a settlement, legal counsel, and court procedures.

#### Audit Trail

The auditable record left by a transaction in a firm's accounting records from original source document into subsidiary ledgers through the general ledger and into financial statements and invoices.

#### Auditee

The firm or person being audited.

#### Billing Rate

The hourly rate being charged for work on an agreement. For a cost plus fixed fee agreement, the billing rate will be exactly the same as the employee's actual payroll rate. For an all-inclusive hourly rate agreement, the billing rate will include the actual payroll rate plus an overhead percentage plus an amount for fee.

#### Close Without Audit

All agreements and subagreements over \$100,000 are required to have a post audit. Agreements less than \$100,000 will be reviewed at the WSDOT Audit Office and usually will be closed without a formal audit.

#### **Common Control**

Exists in related party transactions when business is conducted at less than arm's length between businesses and/or persons that have a family or business relationship. Examples are transactions between family members, transactions between subsidiaries of the same parent company, or transactions between companies owned by the same person or persons.

#### Contracting Officer

A title sometimes used in private and public sectors to indicate the person having authority to enter into a contract or agreement for goods and services.

#### Corporation

A business structure where stock is made available for purchase. The firm may have a president, vice president, treasurer, and secretary. Anyone working for the corporation is usually paid an hourly wage rate or is salaried. In theory, the liabilities of the individual stock owners are limited in this type of business structure. (Seek a good attorney for information on this subject.)

#### Cost Center

A grouping of incurred costs identified with a specific final cost objective.

#### Cost of Money

Facilities capital cost of money in an imputed cost determined by applying a costof-money rate to facilities capital employed in contract performance. It is included in a firm's overhead rate.

#### Cost Plus Fixed Fee Agreement

An agreement in which all the cost factors except fee are actual cost. The fixed fee is a set dollar amount in the agreement.

#### Cost Principles

The underlying basis for determining how costs should be recorded when they are allowable or unallowable, and the specific basis for treating various costs as either allowable or unallowable.

#### Courtesy Audit

An audit performed for another state, another state agency, or city or county government. The audit could be a preaward, interim or post, with the requesting agency paying for the cost of the audit.

#### **Direct Cost**

Any cost that can be identified specifically with a particular final cost objective, i.e., a project related cost. Direct costs would include labor, materials, and reimbursables incurred specifically for an agreement. It is irrelevant whether or not the costs are actually billed. All direct labor costs must be included in the direct labor base. All costs for lump sum agreements must be included in direct costs.

#### Entrance Conference

A meeting between the auditor and the auditee, at which time the purpose and scope of the audit are discussed.

#### Exit Conference

A meeting held after the auditor completes field work at the auditee's place of business. Topics of discussion are preliminary findings of the audit, which are subject to change and revision during the supervisory work paper review process, and/or a formal request for the auditee's response to the draft audit report.

#### Federal Acquisition Regulations (FARs) Code of Federal Regulations No. 48

Sets the criteria for allowable and unallowable costs for federally funded agreements. Since WSDOT does not have a separate state regulation, we apply FARs to all agreements regardless of the source of funding.

#### **Finding**

A statement of noncompliance with the terms of an agreement. A finding includes the condition, criteria, cause, effect, and a recommendation for correction.

#### General Administrative Expenses

Any management, financial, and other expense which is incurred by or allocated to a business unit, and which is for the general management and administration of the business as a whole.

#### Indirect Cost

Any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective. Consultants recover their indirect costs in their overhead rate.

#### Ineligible Costs

A firm's expenditures for labor, materials, equipment, equipment rental rates, or any other cost found to be unallowable for overhead purposes.

#### Interim Audit

An audit, which may be of limited scope, during the life of an agreement. The purpose is to determine the actual allowable costs to date, review and adjust a firm's overhead rate, and audit a prime consultants subcontracts. This audit follows a standard audit plan.

#### Internal Control

The plan of organization and methods and procedures adopted by management to ensure that its goals and objectives are met; that resources are used consistent with laws, regulations, and policies; that resources are safeguarded against waste, loss, and misuse; and that reliable data are obtained, maintained, and fairly disclosed in reports.

#### Lump Sum Agreement

An agreement where the method of payment for delivery of goods and services is one set amount that includes salaries, overhead, and profit with no adjustments. Once the lump sum amount is agreed upon, the services or goods must be provided regardless of the actual cost for the consultant.

#### Negotiated Hourly Rate Agreement

An agreement in which hourly billing rates that include labor, overhead, and fee are negotiated in advance and are listed for a 12-month period.

#### **Overhead Expenses**

All allowable general administrative expenses and fringe benefit costs (sometimes called payroll additives). Depending on the size of the firm, these costs may or may not be separately identified on a schedule of overhead costs. (See Chapter 6.)

#### Overhead Rate

A computed rate developed by adding all of a firm's general and administrative costs, plus fringe benefit costs together, then dividing by a base value, usually direct labor, to get a percentage. This rate is applied to direct labor to allow a firm to recover the share of indirect costs allowable to the agreement.

#### **Partnership**

A business with two or more co-owners, who may or may not have established salaries. The liabilities of the firm are the owners' responsibility. (Seek a good attorney for information on this subject.) Owners may be treated the same as sole proprietors by the auditors regarding the establishment of a salary rate.

#### Post Audit

An audit done after the completion of all work by a consultant. Its scope may include all billed costs by the prime consultant and/or any subconsultants providing services. This audit follows a standard audit plan.

#### **Preaward Audit**

An audit conducted on behalf of WSDOT management for the purpose of validating financial information supplied by a potential consultant. The audit may require an on site visit or information may be reviewed at the Audit Office in Olympia. Upon completion, the information is provided to the WSDOT contracting officer in an audit report for use during agreement negotiations. This audit follows a special preaward audit plan.

#### Provisional Hourly Rate Agreement

An agreement in which hourly billing rates that include labor, overhead, and fee are negotiated in advance, but are subject to adjustment after an audit determines actual labor and overhead rates.

#### Reasonable Cost

A cost, if in its nature and amount, does not exceed that which would be incurred by a prudent person in the conduct of competitive business.

#### Record of Negotiation

A summary memorandum prepared by the WSDOT contracting officer regarding the reconciliation between the consultant's proposal and the WSDOT estimate. It includes contract rate negotiations, disposition of significant matters in the preaward audit report, and reasons why audit recommendations were not followed. It is required by 48 CFR 42.706(b).

#### Single Audit

In theory, an audit which satisfies the needs of all parties involved with funding or doing business with an organization, either private or public. In reality, this is rarely the case because funding agencies still request that their audit groups obtain specific information peculiar to their operations policies and procedures.

#### Sole Proprietorship

A business with one owner. From an audit standpoint, this person may not have an established salary, but instead may rely on draws from the profits of the firm to obtain their payment for services.

#### Source Documentation

Original documents, including but not limited to time sheets, invoices, room receipts, rental slips, gasoline tickets, canceled checks, tax returns, insurance policies, minutes of corporate meetings, etc., which support the costs recorded in the firm's accounting ledgers and which may be used for billing purposes to the government or for income tax purposes.

#### Task Assignment Agreements

An agreement without a definite description of work, but with a specified time period. Tasks which require the consultant's expertise are assigned as needed. Each task will have its own maximum payable amount. The total amount paid on all of the tasks cannot exceed the total amount of the agreement.

#### Unallowable (Cost)

An item of cost which cannot be billed directly or indirectly by a consultant. These types of costs, if found during an audit will be purged from the costs billed directly, or from those billed indirectly via an overhead rate or cost center. When an unallowable cost is incurred, its directly associated costs are also unallowable.

#### Verify

The act of tracing a transaction from a ledger back to the original supporting document.

#### Work Sheet

The consultant's written documentation to support in-house charge-out rates for such things as computer time, photocopies, and billing rates where payroll data is not available. It will show all costs going into the charge-out rate and how revenues from the charges are recorded in the firm's general ledger.

### Chapter 3

### Audit Involvement in the Agreement Process

### Audit Involvement in the Agreement Process

#### Chapter 3

#### **Why Audit**

WSDOT conducts cost and compliance audits for management to ensure that funds paid to outside organizations are eligible and that the firm complied with federal, state, and WSDOT rules, regulations, and the terms of the contract or agreement.

#### What is Auditing

Auditing can be compared to a road map. Driving from Olympia to Spokane, a person can identify a series of roads which allows you to drive from Point A to Point B. When a firm bills WSDOT for services, the auditor expects to identify the item of cost, by finding the supporting document to substantiate each item of cost billed. This audit trail, just like the dots on a map that connect one road to another allowing you to drive from Spokane to Olympia is what the auditor is expecting to find, i.e., an Audit Trail (road map) which leads from the costs billed to WSDOT (Point A) to those original documents (Point B) such as time sheets, invoices, and work sheets used for developing overhead rates, etc., which support the billed costs.

#### **Audit and the Consultant Process**

To understand how audit fits into the WSDOT consultant process, we will first look at the consultant selection process through product delivery.

*Note:* This process is simplified for example only, and may not relate to each consultant selection process.

- WSDOT identifies a need in this case, a new bridge.
- Decision is made whether design work is performed in-house or contracted out.
- WSDOT advertises a Request for Proposal.
- A number of firms respond with proposals.
- Consultant selection interviews take place.
- Based on the consultant interviews, a firm is selected.
- Audit Office Involvement WSDOT management requests a preaward audit.
  Its purpose is to determine that the firm has a cost accounting system capable
  of recording and tracking income and expenditures, and to verify the firm's
  labor rates, overhead, and direct nonsalary costs.
- Audit Office conducts preaward audit and issues a report to WSDOT management.
- Contract negotiations are finalized, agreement is executed, and work by the consultant begins.

- Work progresses, with the consultant submitting monthly billings for work performed to a region or the Olympia Service Center.
- Fourteen months into the project, WSDOT management requests an interim audit. Audit Office conducts audit and issues a report to the consultant and WSDOT management. Possible recommendations include: overhead rate be increased or decreased for the next billing cycle; unsupported labor costs, due to miscoding of project time sheets, be refunded to WSDOT.
- WSDOT management resolves interim audit findings, as work by the consultant continues.
- Two years and three months after entering into the agreement with WSDOT, the consultant's work is completed.
- Three months later, or two years and six months after consultant started work, the final billing is paid by WSDOT.
- WSDOT Audit Office now has up to three years time to conduct a final audit of the consultant and/or subconsultants records. This time limit is usually established in the agreement between WSDOT and the consultant and also is specified in FARs.

*Note:* This means that if the agreement started on January 1, 1997, and final payment was made to the consultant on June 1, 1999, the consultant and any subconsultants must retain all source or original documentation until at least June 1, 2002.

After completion of the post audit, the report is provided to the consultant and WSDOT management for audit resolution.

#### What Triggers an Audit

An audit may be conducted at any time during the life of an agreement. WSDOT management can make special requests for audits. The WSDOT Audit Office will normally conduct an interim audit of a consultant agreement, when the length of the agreement exceeds two years.

#### **Interim Audits**

Audits done after a portion of the work has been done. This type of audit is usually done only on very large agreements or on agreements that extend over a long time period.

#### **Post Audits**

Post audits, after completion of work, are conducted on those agreements which exceed \$100,000, but may also be conducted on those under \$100,000 at management's request or at the discretion of the Audit Office.

#### **Preaward Audits**

Preaward audits will be conducted on any agreement where the proposal exceeds \$250,000 in total costs, or at the request of a WSDOT contracting officer on any proposal.

#### **Agreements Closed Without Audit**

When the total cost of a completed agreement is less than \$100,000, it will usually be closed without audit. But an audit could be conducted at management's request or at the discretion of the Audit Office.

# Chapter 4 Using This Guide

#### Chapter 4

#### Using This Guide

Information included in this guide will follow the format of a firm's progress billing to WSDOT. That is, we will provide an overview of items typically included in a progress billing to WSDOT. In addition, we will briefly discuss the standard WSDOT consultant agreements.

This simplified overview will provide the corresponding chapter where more detailed information about that topic can be found.

Not every topic is discussed in this guide. Every time the audit office sees the light at the end of the tunnel, a new or unusual situation or set of circumstances occurs, causing the Audit Office to rethink a particular definition or procedure.

After beginning work, a consultant will usually bill the department for services in a format which may be similar to the example below:

Simplified Overview of a Progress Billing

Direct Labor — Chapter 5

Overhead — Chapter 6

Direct Nonsalary Costs — Chapter 7

Computer Time, Travel Costs, Subconsultants Costs, Copying

Fixed Fee — Chapter 8

All of these costs must be supported in the books or ledgers of the firm, and be backed by original or source documentation (time sheets, invoices, etc.). For any cost that you expect to be reimbursed, a firm must retain the source documents for at least three years after the prime consultant receives final payment from WSDOT for services rendered.

The Audit Office has found that department managers may require a variety of supporting documentation, i.e., copies of various bills, etc. We recommend that if a firm must submit this type of information, send copies, not the original document. Sending copies of supporting documents with invoices is not a requirement of the Audit Office. During interim and post audits, we will ask to see original documents.

The next four chapters will discuss the costs typically billed to WSDOT, the basis for billing rates, and recommended documentation to provide audit support.

# Chapter 5 Labor Costs

Chapter 5 Labor Costs

This chapter discusses:

- · Labor Costs in General
- Impact of Business Structure on Labor
- Supporting Labor Costs
- Example of a Time Sheet
- Sole Proprietors' Wage Rate and Billing Rates
- · Billing Rates

#### **Labor Costs in General**

Auditors look at labor costs in at least three different ways. They verify direct labor costs billed on a project, indirect labor costs accumulated in a firm's overhead rate, and total direct labor dollars used as a basis for determining a firm's overhead rate.

Auditors make the distinction between labor costs and market billing rates for services provided on an hourly basis. A billing rate includes overhead, profit, and salary while a wage or labor rate is a raw labor cost.

A firm must be able to identify direct labor, i.e., labor recorded directly to all projects, from indirect labor, i.e., that labor commonly incurred for general administration of the organization, including accounting, marketing, sales, budget, and administrative management of the organization. It should be noted that all direct labor recorded for projects goes into the direct labor base regardless of whether it is billed to the client or not.

If compensatory time for extra work or overtime pay is granted, the costs associated with this activity must be segregated from direct labor costs. The reasoning is that the fringe benefits and in part, other related overhead costs of a firm do not relate directly to the overtime hours expended while working on projects. For example, the depreciation cost of a building for a given time period is the same whether people work 40 hours per week or 60 hours per week.

#### Impact of Business Structure on Labor

The type of business structure may impact the development of actual labor costs, versus those that are billed. Typical business structures include sole proprietorships, partnerships, public and private corporations, and government agencies.

Under most circumstances, an employee is hired at a wage rate or salary level that is used in determining a labor rate. WSDOT uses 2,080 hours as the number of hours in a year for computing hourly labor rates. If a firm is using a standard work week of less than 40 hours, they must be prepared to show that their timekeeping and billing are based on their standard.

#### **Supporting Labor Costs**

Labor costs need to be supported by monthly, weekly, or daily time sheets for project people (those charging direct to a job) and may also be used for administrative or indirect type labor employees.

#### **Example of a Time Sheet**

In the example shown below, a firm would bill, and the WSDOT auditor would expect to see 37 hours charged to WSDOT and 18 hours of work charged to XYZ Co. for services provided.

Time sheets must be retained for at least three years after final project payment to the consultant. If in this example, the time sheet is for a subconsultant who completed work two years before the prime was paid for all work performed, the subconsultant would have to retain the time slip for at least five years.

The method for recovering vacation, sick leave, administrative time, and overtime will be discussed in the Overhead section of this guide.

Name: Smith, John	SSN 123-45-6789						Period Ending 1/15/00							
Job Description M	T	W	TH	F	S	S	M	T	W	TH	F	S	S	TOTAL
	4 2		4 2	2 4	2 4			8	4	4 2	5	4		37 18
VACATION SICK LEAVE	2 8	8	2	2	2			8	2	3	4 8	8		11 10 4 80
SIGNED <u>JOHN SMIT</u>						SU	PER	VIS	OR <u>C</u>	ON	WAY	Z TV	<u>WIDDY</u>	

#### Sole Proprietors' Wage Rate and Billing Rates

In sole proprietorships, it can be difficult to determine hourly wage rates because payroll to owners may be based on company profits and draws on those profits. Because of fluctuations in work performed and resulting billings and collections, an owner may not take any salary in a month, but then recoup in later months. In this situation, the wage rate will be calculated from total annual draws.

Sole proprietorships and partnerships should realize that WSDOT is under no obligation to subsidize operating losses by paying higher than actual wage rates. This especially should be considered when the amount of draws are being determined.

Also, since some small businesses are worked only part time, it is extremely important for the owners and employees to keep detailed time records of all direct and indirect hours worked.

Once an annual average hourly rate is determined, billing rates will be based on the calculated rate in the same manner as if the rate was a regular hourly payroll rate.

See Chapter 19 for details on determining wage rates and Chapter 20 for billing rates.

#### **Billing Rates**

Billing rates must use actual payroll rates as their base. In all WSDOT agreement types, payment for direct labor is based on actual payroll rates, by employee. Proposals may estimate total labor by using average wage rates, but billing for actual services must be based on each employees actual payroll rate.

A billing rate, such as used in a provisional or negotiated hourly rate agreement, has three components:

- Direct labor
- Overhead (as a percentage of direct labor)
- Fee (either a fixed amount or a percentage of direct labor)

These and other labor billing rates are discussed further in Chapter 20.

## Chapter 6 Overhead Costs

### Chapter 6

### **Overhead Costs**

This chapter discusses:

- · Overhead Costs
- The Development of an Overhead Schedule
- · Costs Normally Included in a Firm's Overhead
- · Unallowable Costs Included in Overhead
- Costs Which Create the Most Confusion for Consultants

### **Overhead Costs in General**

Overhead costs are those general expenses incurred during the normal course of operating a business. At times, these costs may be called General and Administrative, Fringe Benefit Costs, Overhead, or Payroll burden.

The majority of firms doing business with WSDOT lump these business costs together into a firm wide overhead rate. For management purposes, larger firms may segregate the costs into the groups as previously identified. The reasons for this distinction vary; therefore, we reference you to the nearest library or cost accounting textbook. The primary reason is for the management of business costs at the lowest level possible.

WSDOT Auditors use the Federal Acquisition Regulations (FARs) to assist in establishing overhead costs which may be recovered in a firm's overhead rate. *Note:* We said may be recovered!

The reader needs to understand the distinction between overhead costs and overhead cost categories that can be included in an overhead rate.

This includes the fact that costs accepted by the Internal Revenue Service may not be acceptable for contracting purposes with WSDOT because IRS and FARs regulations are different.

This computed rate is normally applied to direct labor, ultimately to be recovered against the agreement.

FARs Part 31 lists approximately 52 cost categories including direct and indirect costs, interest expense, et al. What follows is a discussion of some of those overhead costs which can and cannot be included in a firm's overhead rate and the basis.

### **Words of Wisdom**

Document, Document — This cannot be over emphasized. If you want to recover your overhead costs to the greatest extent possible, document the costs incurred and have support showing payment for claimed expenditures.

For more detailed reading on the cost principles, we reference the reader to Chapter 26 of this guide which contains the FARs, Part 31 Cost Principles, applicable to commercial agreements.

### **Development of an Overhead Schedule**

As you may have guessed by now, an overhead schedule can only be developed if the firm has taken the time to segregate expenses by some logical cost grouping identified in the accounting ledgers. Expenditures in these cost groups must be segregated by direct project costs and indirect overhead costs. These costs are then summarized on a monthly, quarterly, or annual basis. On an annual basis, they might look like the example shown on the following page.

This example is typical of the costs found in many organizations and will be used as the basis for further discussion in the remainder of this chapter.

The purpose of providing a sample overhead schedule is to establish a starting point for a new consultant or subconsultant who is not familiar with developing an overhead schedule.

Consultants and subconsultants who have done business with WSDOT in the past are familiar with the required format. In addition, it makes good business sense for consultants to know each year the overhead costs for their business, not only for WSDOT agreements but any other contracts they participate in.

From our experience, there are a variety of ways consultants present overhead schedules. They are acceptable as long as they present information in a format we can use and audit. WSDOT Audit accepts overhead schedules for the latest complete fiscal year. The dollar amounts on the overhead schedule should agree with financial statements. Documents to support the overhead schedule should be available for inspection. We review the support documents for compliance with 48 CFR 31 (Code of Federal Regulations Federal Acquisition Regulations System Part 31 Contract Cost Principles and Procedures). We use other parts of 48 CFR as well but Part 31 is the primary one. In addition, certain WSDOT directives (i.e., D 13-50 Travel Expenses) are used for audit criteria.

Not all cost categories will be discussed in this chapter. The reader may be referenced to another location where the cost has been previously discussed. In some cases, we believe the title of the cost category is adequate regarding the classification of the cost item.

**Please Note:** There is a difference between the rules and regulations used by the Internal Revenue Service for tax purposes and those used for government contracting regarding the eligibility of business costs!

Sheet 1

### XYZ Corporation Overhead Schedule December 31, 1998

Description	Stated Amount	Adjustments	Ref.	Audited Amount	Percent
Direct Labor Base	\$1,220,565	\$ 26,703	L	\$1,247,268	
Overhead Costs					
Vacation Leave	\$ 161,578			\$ 161,578	12.95%
Holidays	54,250			54,250	4.35
Sick Leave	24,972			24,972	2.00
Payroll Taxes	147,870			147,870	11.86
Employee Insurance	90,043			90,043	7.22
Unemployment Taxes	17,528			17,528	1.41
Worker's Comp	7,564			7,564	0.61
401(k) Plan Contributions	32,752			32,752	2.63
401(k) Plan Administration	7,246	\$ 430	В	7,676	0.62
Bonuses	300,201	(3,588)	D	296,613	23.78
Rent	142,947			142,947	11.46
Office Maintenance	17,785			17,785	1.43
Telephone	18,604	(1,232)	F	17,372	1.39
Principal's Salaries	126,130	(5,650)	В	120,480	9.66
Clerical Salaries	80,006			80,006	6.41
Administrative Salaries	391,496	(28,514)	C,L	362,982	29.10
Accounting	71,006	(5,570)	Ε	65,436	5.25
Business Taxes	65,386			65,386	5.24
Insurance	101,571	(7,590)	Ο	93,981	7.53
Warranty Service	3,035	(3,035)	Ν	0	0.00
Employee Recruiting	18,798	(1,350)	F,G	17,448	1.40
Printing, Stationary, Etc.	82,585	(4,490)	F,I	78,095	6.26
Computer Expenses	59,967	(52,741)	B,C	7,226	0.58
Computer Administration	41,394	(34,944)	B,C	6,450	0.52
Auto and Travel	35,749	(24,939)	B,K	10,810	0.87
Fees, Dues, Meetings, Etc.	31,186	(552)	G	30,634	2.46
Subscriptions and Publications	6,444			6,444	0.52
Professional Services	10,265	(5,276)	E,H,J	4,989	0.40
Depreciation	78,703	(59,829)	C,M	18,874	1.51
Mileage Reimbursement	(15,694)	/		(15,694)	-1.26
Advertising and Promotion	9,218	(9,218)	A,F	0	0.00
Bad Debts	12,007	(12,007)	A,H	0	0.00
Entertainment	3,800	(3,800)	A	0	0.00
Contributions	1,110	(1,110)	A,I	0	0.00
Federal Income Tax	66,258	(66,258)	A,E	0	0.00
Interest	7,535	(7,535)	A	0	0.00
Miscellaneous	14,876	(10,508)	Α	4,368	0.35
Cost of Money	6,462			6,462	0.52
<b>Total Overhead Costs</b>	\$2,332,633	\$(349,306)		\$1,983,327	158.98%

Sheet 1

**Overhead Rate** 190.58% 158.50%

### References

- A. Unallowable amounts removed by XYZ Corp. per various FARs cites.
- B. Adjusted to year end trial balance actual cost amounts.
- C. Allocation by XYZ Corp. to computer cost center.
- D. Adjustment for WSDOT Bonus Policy. Maximum allowable amount is 15% of total allowable overhead.
- E. Federal income tax return preparation over \$250 unallowable per 48 CFR 31.205(b)(1), 48 CFR 31.201-6(d), and WSDOT policy.
- F. Advertising and public relations costs unallowable per 48 CFR 31.205-1(d).
- G. Costs of alcoholic beverages unallowable per 48 CFR 31.205-51.
- H. Bad debts unallowable per 48 CFR 31.205-3.
- I. Contributions unallowable per 48 CFR 31.205-8.
- J. Organization costs unallowable per 48 CFR 31.205-27(a)(1).
- K. Travel costs in excess of Federal Travel Regulations unallowable per 48 CFR 31.205-46(a)(2)(i).
- L. Adjust labor amount for uncompensated overtime.
- M. Adjustment to XYZ Corp. capitalization policy.
- N. Direct costs on other projects unallowable in overhead per 48 CFR 31.202(a).
- O. Key man life insurance unallowable per 48 CFR 31.205-19(a)(2)(vi).

### Cost Categories Normally Included in a Firm's Overhead Schedule

Accounting — costs incurred for staff accountants or outside accounting vendors.

Administration — typically, salary costs of people not charging to any one final cost objective, such as a direct project.

Advertising and Promotion — mostly unallowable costs.

Annual Leave — vacation time paid to employees, officers, and owners.

Auto and Travel — costs for travel that are not project related. Payment of these costs must comply with the Federal Travel Regulation.

Bad Debts — losses on projects due to write offs of billed uncollected costs and/or unbilled costs. Not an allowable overhead cost.

Bonuses — incentive compensation; these costs are limited by WSDOT policy.

**Business Taxes** 

Clerical Salaries — not charged direct to a project.

Computer Administration

Computer Expenses — net of costs recovered from direct billings.

Contributions — gifts to people or entities of money, services, assets, or any other item that may appear in the balance sheet or general ledger of a firm. Not allowable in overhead.

Depreciation

Direct Labor — dollar value of all labor worked for projects, regardless of whether billed or not.

Direct Labor Base — the total amount of direct labor recorded for all projects.

The amount which is used as the base for the calculation of an overhead rate.

Employee Insurance — medical, dental, life, disability, etc.

Employee Recruiting — help wanted advertising and interview expenses. Travel costs must comply with the Federal Travel Regulation.

Entertainment — any expense which appears to be social in nature. Not allowable in overhead.

Fees, Dues, Meetings — Costs of belonging to professional organizations and societies. Cost of attending official business meetings. These costs must comply with the Federal Travel Regulation where applicable.

Holiday — all paid holidays observed by the firm.

Income Taxes —federal income taxes are unallowable in overhead. State income taxes are allowable.

Insurance — general business and liability insurance. May be paid to a vendor or set up as a bona fide self insurance fund.

Interest Expense — Costs of borrowing, regardless of how paid. Unallowable in overhead.

Mileage Reimbursement — payments to employees for using their personal vehicles for company business, net of costs recovered from direct billings to projects. Rates paid cannot exceed the current rate allowed in the Federal Travel Regulation.

Miscellaneous — any expense not included in another account.

Overhead — indirect business expenses not directly chargeable to a project.

Principals Salaries — not charged direct to a project.

Printing, Stationary — paper products not for promotional purposes.

Professional Services — general legal, accounting, management consulting, and other services.

Rent — office and storage space costs, not charged direct to a project.

Repair and Maintenance — janitorial services and minor repairs to office space and equipment.

Retirement —costs paid by the firm for retirement programs, including 401(k) plan contributions and administrative expenses. Does not include contributions made by the employees.

Sick Leave — costs paid by the firm normally associated for leave taken for illness, injury, etc.

Social Security Taxes

**Subscriptions and Publications** 

Telephone — costs incurred not chargeable to direct projects.

**Unemployment Taxes** 

Warranty Services — costs incurred for previously completed projects, or fees for service contracts.

**Workers Compensation** 

### Types of Unallowable Costs Often Included in Overhead

The following is a listing (which is not all-inclusive) of costs which auditors typically find in a firm's overhead cost categories.

Updates to this guide may include additional examples of unallowable costs as they come to our attention.

Our recommendation to firms who may include these types of costs in their overhead computation is remove them to the extent possible before the firm is audited. A

Advertising 48 CFR 31.205-1(d)

Alcoholic beverages per 48 CFR 31.205-51

В

Bad debt expense per 48 CFR 31.205-5(c)

Bonuses in excess of 15 percent of total allowable overhead are unallowable per WSDOT policy.

Brochures per 48 CFR 31.205-1(f)(5)

C

Christmas party expenses in excess of \$25 per employee per 48 CFR 31.205-14 and WSDOT policy

Christmas cards for clients and the general public per 48 CFR 31.201-4

Credits for income from work study employees 48 CFR 31.201-5 per 48 CFR 31.205-1(f)(7), 48 CFR 31.205-43(a)

Contributions per 48 CFR 31.205-8

Civic club dues, except Chamber of Commerce, per 48 CFR 31.205-1(f)(7)

Christmas gifts per 48 CFR 31.205-14

Common control rental costs per 48 CFR 31.205-36(b)(3)

Costs not identified per 48 CFR 31.201-6(c)

D

Depreciation in excess of amount claimed on federal tax return per 48 CFR 31.205-11

Donations per 48 CFR 31.205-8

Directory advertising per 48 CFR 31.205-1(d) & (f)(1)

Direct costs billed to clients per 48 CFR 31.202(a)

Display costs per 48 CFR 31.205-1(f)(2)(i)

E

Entertainment per 48 CFR 31.205-14

Expenses with no support documents disallowed per 48 CFR 31.201-6(c)

F

Flowers to clients per 48 CFR 31.205-13(a)

Federal income tax per 48 CFR 31.205-41(b)(1)

Federal income tax preparation fees over \$250 per year per 48 CFR 31.205-41(b)(1), 31.201-6(d), and WSDOT policy

Finance charges per 48 CFR 31.205-20

G Н Interest per 48 CFR 31.205-20 J K Key man life insurance per 48 CFR 31.205-19(a)(2)(vi) L Local meals per 48 CFR 31.205-14 and WSDOT Travel Directive D 13-50, except when the meal is a bona fide business meeting. To support costs, there must be an agenda, a listing of people who attended showing how much was spent for each person. Local lodging per WSDOT Travel Directive D 13-50 Delinquent license fee per 48 CFR 31.201-3(a) М Costs of memberships in civic and community organizations, and not a membership in trade, business, technical and professional organizations per 48 CFR 31.205-1(f)(7&8) and 48 CFR 31.205-43 Ν 0 P Penalties per 48 CFR 31.205-15(a) Prior year expenses per 48 CFR 31.201-2(c) and 48 CFR 31.201-3(a) Premium time per 48 CFR 22.103-2 Q R Recovered in-house charges per 48 CFR 31.201-5 Recovered long distance phone calls per 48 CFR 31.201-5 Related party profit portion on rent per 48 CFR 31.205-36(b)(3) S Shareholder life insurance per 48 CFR 31.205-19(a)(2)(vi)

T

Trade show and advertising per 48 CFR 31.205-1(f)

Preparation fees for federal income tax returns in excess of \$250 per 48 CFR 31.205-41 and 31.201-6, and WSDOT policy

Travel costs exceeding maximum allowed per WSDOT Travel Directive D 13-50

U

Unsupported costs 48 CFR 31.201-6(c)

V

W

X

Υ

Z

### **Establishment of a Direct Labor Base When Developing Overhead Rates**

During an audit, the WSDOT auditor will analyze how the firm charges labor and how it allocates costs based on the labor charges.

The objective of the analysis of the consultant's labor system is to ensure that labor costs are segregated between direct and indirect labor. This can include the identification of specific cost or profit centers, departments, contracts or cost objectives, or employees or groups of employees.

In reviewing a consultant's direct labor base, the auditor may select a period of time (usually the current fiscal year) to sample. The sample size selected is dependent on the size of firm. The auditor will then identify and list all individuals including the hours worked for direct projects and charged indirectly, including vacation, holiday, and sick leave hours.

These costs may be traced to a summary document. The document could be manually prepared or developed from a computer based system. This type of document may be identified as a labor distribution report (LDR). The auditor will compare the hours on the time sheet to the hours reported on the LDR. To make comparisons, the auditor will request a copy of the payroll registers which coincide with the time sheets and LDR amounts.

The auditor will then verify labor costs via a weekly or monthly payroll document to a general ledger transaction which identifies the dollar amount. These costs should match the dollar amount calculated by the auditor from the time sheets and/or LDR. By comparing dollar amounts in the General Ledger, the firm's direct labor, indirect labor, holiday, vacation, and sick leave costs are verified.

Based on a series of audit samples, the auditor will either accept the labor system or note deficiencies and adjust the direct labor base and/or indirect labor as necessary.

### Overhead Rate Development — General Summary

All amounts listed on an overhead schedule should agree with a general ledger, trial balance, or financial statement. Preferably the consultants' accountant or certified public accountant should have compiled, reviewed, or audited the financial statements for the latest complete fiscal year and when possible, issued a report.

### Direct Labor

Direct labor costs are normally the largest cost item listed on the overhead schedule. Direct labor should be listed separately on the overhead schedule because it is the basis for determining an allowable overhead rate. In order to verify these costs, support documents needed may include:

- general ledger
- labor distribution reports
- · payroll registers
- · time sheets
- W-2s
- personnel files for paid hourly rates and job classifications
- · check register
- canceled checks
- · journal entries
- job charge coding lists

All original support documents used to generate the direct labor amount may be requested.

### Other Costs

All other costs on the overhead schedule can be grouped in various ways:

- · indirect
- · overhead
- · fringe benefits
- · salary related
- general and administrative

Support documents needed here include but are not limited to:

- · general ledger
- invoices
- · vouchers
- · agreement files

- recap of billed costs
- depreciation schedules
- · tax returns
- · rental agreements
- · insurance policies
- · bonus policy
- travel expenses
- · check register
- cash disbursement journals
- · canceled checks
- journal entries
- job charge coding lists

### Indirect Labor

Indirect labor would include the same kind of support documents as direct labor:

- · general ledger
- labor distribution reports
- · payroll registers
- · time sheets

### Office and Administrative Costs

Office costs and other in-house costs for reproduction, computer time, word processing, equipment rental, etc., can be stated so much per copy or so much per hour. Documents used to calculate the per copy or per hour charge would be necessary to determine the source of the per copy or per hour charge. Again, all support documents used to generate amounts on the overhead schedule would be needed. See Chapter 13 for more information.

All costs are subject to tests of allowability, allocability, and reasonableness based on federal, state and WSDOT laws, rules regulations, and policies.

### WSDOT Overhead Policy

The WSDOT Overhead Policy was issued in 1994. It is included here for your use.

Cost Category	WSDOT Policy (Overhead Costs)			
Athletic Club Membership	Allowable, if costs are reasonable (maximum \$40 @ month @ employee using club) and memberships are available to all of the consultant's employees.			
Bank Fees	Allowable; unless the fee is for interest or penalties.			
Candy	Allowable per employee morale costs, if the costs are not excessive when compared to industry standards.			
Cookies	Allowable per employee morale costs, if the costs are not excessive when compared to industry standards.			
Coffee	Allowable per employee morale costs, if the costs are not excessive when compared to industry standards.			
Chamber of Commerce Dues	Allowable; these are business organizations.			
Christmas Cards	Allowable for employees and their families only. Unallowable for clients, etc.			
Christmas Parties	Allowable, if reasonable. Allow up to \$25 per attending employee, however, must exclude alcoholic beverage costs.			
Donuts	Allowable per employee morale costs, if the costs are not excessive when compared to industry standards.			
Federal Income Tax Preparation	Allowable up to \$250 per year.			
Flowers	Allowable per employee morale costs, if the costs are not excessive when compared to industry standards.			
Greeting Cards	Not allowable. This is an advertising cost.			
Lunches	(Incurred during nontravel status) Allowable at a bona fide business meeting and if the following documentation is provided:			
	1. Date and location of meeting.			
	2. Names of attendees.			
	3. Purpose of the meeting.			
	4. Cost of meeting, by item.			
	<i>Note:</i> The allowable amount per person cannot exceed the WSDOT Travel Directive D 13-50 amount for the meal period.			
Subsistence/Lodging Costs	Consultant is not subject to the maximum lodging, or subsistence amount as outlined in WSDOT Directive D 13-50 in overhead (this can include incidentals, tips, transportation to meals, etc.). They are subject only to the total per diem cost limitations.			
Summer Picnics	Allowable, if reasonable. Allow up to \$10 per attending employee. However, must exclude alcoholic beverage costs.			

## Chapter 7 Direct Nonsalary Costs

### Chapter 7

### **Direct Nonsalary Costs**

Direct nonsalary costs (also called reimbursables) are those costs other than payroll and overhead costs which are incurred specifically for a given project. Depending upon the type of contract or agreement, these costs may or may not be billed to the client.

### **Types of Direct Nonsalary Costs**

Types of direct nonsalary costs typically charged to a WSDOT agreement include but are not limited to:

- plan copies
- long distance phone calls
- travel
- subcontract costs
- · mileage costs
- subsistence
- equipment rental
- · photographs
- · contract employees
- · computer expense
- photocopies
- faxes
- courier service

### **Recording Direct Nonsalary Costs**

A firm should record direct nonsalary costs separately from overhead costs in their accounting system. Even when a firm does not bill these costs directly to a project, they should be recorded as direct costs. If discovered by the auditor in direct costs, they will be removed, ref: 48 CFR 31.202(a).

Some firms elect to record direct nonsalary costs in their overhead accounts. When this is done, the firm must be able to prove that the overhead accounts are credited for all revenues billed to clients and for all unbilled direct nonsalary costs. Whether or not the firm actually collects on the billings is not relevant.

### **Audit of Nonsalary Costs**

As with other costs, these costs must be properly supported in the records of the organization and traceable to source documentation.

Testing for allowability, reasonableness, and allocability is standard procedure for the auditor.

### **Developing Charge-Out Rates for Selected Direct Nonsalary Costs**

For development of charge-out rates for computer costs, computer assisted drafting and design equipment, copy machines etc., see Chapter 13.

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## Chapter 8 Fixed Fee

Chapter 8 Fixed Fee

Fee is the amount of profit allowed by an agreement. In a cost plus fixed fee agreement, it is a set dollar amount that is billed monthly by the estimated percentage of work completed. In an all-inclusive hourly rate agreement, fee is a component of the hourly billing rate.

The auditor will review fee paid (when not included in an all-inclusive hourly rate) to determine that the firm has received compensation based on the terms of the agreement and the progress billing to date.

The amount of fee is determined during negotiations between the consultant and the contracting office. WSDOT uses a formula to calculate fees for each job. The formula takes into account job complexity, difficulty, risk, consultant investment in equipment, number of subconsultants, and other factors (see the following pages).

By policy, WSDOT limits fee to a range of 17 to 35 percent of direct labor. By policy, FHWA limits fee to a range of 10 to 15 percent of direct labor plus overhead on federally funded projects.

For additional information on this subject, talk to the contracting officer or the consultant liaison person handling the proposed or ongoing agreement.

### **Fee Including Profit**

- 1. Fee should be established as a dollar amount after considering:
  - a. Degree of risk.
  - b. Nature of the work to be performed.
  - c. Joint venture responsibilities.
  - d. Extent of the consultant's investment.
  - Number and amount for subconsultants.
  - f. Other criteria such as discussed in 48 CFR 31.105.

The final step is to determine a reasonable profit.

You may use a "weighted guideline method" of computing fee.

This is a technique that will ensure consideration of the relative values of the appropriate factors in the establishment of a fee during negotiations and provide documentation of how the fee was determined. 2. In negotiating fee as an element of price, a reasonable fee shall be negotiated or determined for each agreement by using the following procedure as a guide.

### **Weighted Guidelines**

<u>Factor</u>	<u>Rate</u>	<u>Weight</u>	<u>Value</u>
Degree of Risk	25		
Relative Difficulty of Work	20		
Size of Job	15		
Period of Performance	15		
Contractor's Investment	5		
Assistance by the State	5		
Other Criteria	5		
Subconsultants	<u>10</u>		
	100		

3. Based on the circumstances of each agreement, each of the above factors shall be weighted from .17 to .35 as indicated below. The value shall be obtained by multiplying the rate by the weight. The value column, when totalled, indicates the fair and reasonable fee percentage of direct labor costs for the agreement.

Degree of Risk — Where the design involves no risk or the degree of risk is very small, the weighting should be .17; as the degree of risk increases, the weighting should be increased up to a maximum of .35. Agreements with options will have, generally, a higher weighted value than agreements without options for which quantities are provided. Other things to consider: the portions of the design to be done by subconsultants, nature of design, relationship of project estimated costs to realistic estimated costs, responsibility for design, reasonableness of negotiated costs, amount and type of labor included in costs, whether the negotiation is before or after performance of work, amount of principal time required.

Relative Difficulty of Design — If the design is most difficult and complex the weighting should be .35 and should be proportionately reduced to .17 for the simplest of jobs. This factor is tied in, to some extent, with the degree of risk. Some things to consider: the nature of the design; by whom it is to be done, i.e., subcontractors, consultants; what is the time schedule; rehabilitation work or new work.

Size of Job — All agreements with estimated total costs less than \$50,000 may be weighted at .35. Agreements estimated between \$50,000 and \$500,000 may be proportionately weighted from .35 to .21. Agreements from \$500,000 to \$1,000,000 may be proportionately weighted from .21 to .17 and work in excess of \$1,000,000 at .17. It should be noted that the magnitude of the job effects better control of fixed expenses.

Period of Performance — Agreements that extend in excess of 23 months are to be weighted at .35. Agreements of lesser duration are to be proportionately weighted to a minimum of .17 for work not to exceed 60 days. No weight where additional time is not required. This basically refers to changes that can be done within the original contract time. Exposure over long time jobs creates more chance of loss and less revenue to recover fixed expenses.

Contractor's Investment — To be weighted from .17 to .35 on the basis of below average, average, and above average. Things to consider: amount of subcontracting, government-furnished items, surveys, soil tests, methods of making progress payments, etc.

Assistance by the State — To be weighted from .35 to .17 on the basis of average to above average. Things to consider: existing design or plans, mapping, quantities, surveys, geotech information, etc.

Other Criteria — To be weighted from .35 to .17 on the basis of allowable cost to the consultant.

Subconsultants — To be weighted in proportion to the amount of subconsultants. Where 40 percent or more of the design is to be subbed out, the weighting is to be .35 and such weighting proportionately decreased to .17 where all the design is performed by the consultant's own forces.

When considered necessary because of unusual circumstances or local conditions, the range of weight may be increased above 35 if supported by adequate justification and approved by the Assistant Secretary, Environmental and Engineering Service Center.

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### **Consultant Fee Computation** Agreement Y-Project: Consultant: Estimated Design Fee: Weighted Guidelines Factor Rate Weight Value Degree of Risk 25 Χ Relative Difficulty of Work Χ \_\_\_\_20\_\_\_ Size of Job 15 Χ Period of Performance 15\_\_\_ Χ \_\_\_5\_\_ Contractor's Investment Χ \_\_\_5\_\_ Χ \_\_\_\_ Assistance by the State 5\_\_\_\_ Other Criteria Χ 10 Subcontracting Χ

Prepared By:	 	 	 
Date:			

100

Total

### Chapter 9 Subconsultants

### Chapter 9

### Subconsultants

Depending upon the size of an agreement and the variety of expertise required to accomplish a project, the consultant may elect to contract out part of the work to subconsultants. Also, federal and state requirements may require the use of disadvantaged minority women's business enterprises (DMWBE) in government contracted work.

The use of specific subconsultants and amounts to be billed by subs must be approved in the agreement in writing. Exhibits to the agreement will include the subconsultants proposed labor costs, overhead costs, direct nonsalary costs, and fee in the same manner as for the prime consultant.

All federal, state, and WSDOT rules, regulations, and policies are applicable to the subs.

The firms should discuss this area with the WSDOT contracting officer or consultant liaison in charge of the proposal.

Subconsultants should work with the prime in order to ensure that they understand the contractual relationship that exists between the two organizations. In addition, they should ensure for themselves that they understand the reporting requirements, record retention requirements, and the overall relationship between the work they perform and what is required by the prime as well as WSDOT Audit and management.

*Note:* Contract labor, i.e., contract employees hired for a specific project are considered to be a subcontractor to either the prime or designated subconsultant.

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# Chapter 10 Record Retention for Consultants

### Record Retention for Consultants

### Chapter 10

### **Summary**

The auditors rely upon a review of source documentation when conducting their audit of a firm's records.

Simply stated:

No source records = Questioned costs and recommendations that billed and paid costs be recovered from the consultant.

### PLEASE NOTE !!!!!! PRIME AND SUBCONSULTANTS

It is important for the consultant to realize the following:

The requirement to retain all project and accounting records extends from the prime consultant to the subconsultant to any and all tiers. To further emphasize, prime consultants are responsible for ensuring that their subconsultants retain their original records as required by the agreement! If an audit has fundings on a subconsultant due to unavailable records, the prime consultant is responsible for paying the finding.

For subconsultants, it is important to remember that the three-year record retention period is three years from the date of final payment from WSDOT to the Prime Consultant. This can be much longer than three years from the date of final payment to the subconsultant.

Once an audit begins, the requirement to maintain records by the consultant continues until final resolution of the audit occurs. This extends the three-year requirement even further. Otherwise, the usual three-year period governs.

Consultants have the responsibility to maintain these records at their business location. Nowhere does it say that if the consultant has already sent copies of their records to WSDOT, they no longer are required to maintain all original records for the prescribed period of time.

The consultant has the responsibility to provide original documents as requested by the auditor.

Missing original supporting records or a lack of an audit trail is cause for audit findings.

Because of the importance of this area, we make direct reference to the audit criteria, 48 CFR Part 4 Administrative Matters Subpart 4.7 Contractor Records Retention.

### 4.700 Scope of Subpart

"This subpart provides policies and procedures for retention of records by contractors to meet the records review requirements of the Government. In this subpart, the terms "contracts" and "contractors" include "subcontracts" and "subcontractors...."

### 4.703 Policy

- (a) "... contractors shall make available records, which includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the contracting agencies . . ."
- (c) "Nothing in this section shall be construed to preclude a contractor from duplicating or storing original records in electronic form unless they contain significant information not shown on the record copy. Original records need not be maintained or produced in an audit if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

  (1) The contractor or subcontractor has established procedures to ensure that the imaging process preserves accurate images of the original records, including signatures and other written or graphic images, and that the imaging process is reliable and secure so as to maintain the integrity of the records. (2) The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records. (3) The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems."
- (d) If the information described in paragraph (a) of this section is maintained on a computer, contractors shall retain the computer data on a reliable medium for the time periods prescribed. Contractors may transfer computer data in machine readable form from one reliable computer medium to another. Contractors' computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Contractors shall also retain an audit trail describing data transfer. For the record retention time periods prescribed, contractors shall not destroy, discard, delete, or write over such computer data."

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### Chapter 11 Task Assignment Agreements

### Chapter 11

### Task Assignment Agreements

Agreements with multiple tasks can be written in different ways. The following is a generalization of the extent of record keeping necessary to comply with the usual audit requirements and some of the pitfalls to avoid.

### **Labor Costs**

Consultants and their subconsultants should maintain time sheets (cards/tickets) with coding to separately identify hours for each and every task order assignment or subtask order assignment. A master job charge coding chart should be maintained which identifies the task order by name and associated alpha/numeric designated code.

### Pitfalls to avoid:

- 1. Changing a job code from one task number to another.
- 2. Using the same name or code for more than one task order.
- 3. Charges in excess of the established maximum amount payable for the individual task.
- 4. Charging for work performed before the authorized start date or after the authorized end date.

### **Direct Nonsalary Costs**

For direct nonsalary costs (commonly termed reimbursables), the consultant and subconsultants need to identify on each vendor's invoice the appropriate task assignment number. For costs of in-house charges, sufficient coding must be included on the log sheets, mileage records, expense vouchers, or other source document. The auditor must be able to trace expenses to the source document. This coding should be done in a manner similar or identical to that used for the time sheets.

### Pitfalls to avoid:

- 1. Splitting of outside vendor invoices between the various task assignment orders without a reasonable basis.
- 2. Failure to identify the task order that relates to the invoice or in-house cost.

Filing records associated with multiple task agreements.

The auditor must have access to the following types of information:

- 1. Task order documents.
- 2. Billings by task.
- 3. Original source documentation by task.

When setting up a filing system, the consultant should take care to ensure that the system allows easy access to information or data. Mixing the task information together often results in a difficult audit trail.

Sometimes, items such as time sheets, invoices, or other original documents are lost or misplaced and this leads to questioned costs unless they can be found. This adds to audit time and the consultant's frustration with the total audit process.

It should also be noted that all costs incurred on specific task assignments are considered direct costs. Such costs may not be transferred to overhead or to other tasks or projects simply because they were not paid during the normal process of progress billings.

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## Chapter 12 Invoicing WSDOT

When invoicing WSDOT, the consultant should clearly identify the billing period, names and job classifications of all individuals being billed, the payroll or billing rate by individual, the actual hours each individual worked, the overhead applied if applicable, the direct nonsalary costs, subconsultant costs if any, and profit applied. These costs must be clearly identified by task and preferably sorted by task within the monthly billing.

Example: (The actual format requested by WSDOT management may vary.)

*Note:* Names, job classes, task numbers, and hours are assumed for this example only.

		Job					
<u>Period</u>	<b>Employee</b>	<u>Class</u>	<u>Task</u>	<u>Hours</u>	Rat	<u>e</u>	<u>Dollars</u>
1/1-	G. Jones	Eng. V	121.1	14.5	\$32.	25	\$467.63
2/28/97							
Total Lab	or Task 121.1				\$	467	7.63
Overhead	1 @ 143.48%				\$	670	).96
Direct No	onsalary Costs:						
Cop	oies 233 at 3.5	cents	\$	8.16			
Mile	eage 400 miles	at 31 cents		124.00			
Hot	el/Per diem 1/5	5-1/9		475.00			
Total Dire	ect Nonsalary	Costs	\$	607.16	\$	607	7.16
Subconsu	ıltants (See Att	ached Backu	p for In	voice)			
Geotech 1	Inc.		\$	5,789.09			
Engineeri	ing Group Ltd.			999.43			
Conglom	erate Drillers			7,776.52			
Total Sub	consultant Cos	sts			\$1	4,565	5.04
Profit @	32.2% of Direc	ct Labor			\$	150	).58
Total Tasi	k 121.1 This B	illing			\$1	6,46	1.37
Billings p	orior to This In	voice	\$ 34	16,987.05			
This Billi	ing		1	16,461.37			
Total Bill	ed to Date		\$36	63,448.42			
Task 121.	.1 Maximum		\$45	55,456.78			
Amount 1	Left on Task 12	21.1	\$ 9	92,008.36			

		Job				
<u>Period</u>	<b>Employee</b>	<u>Class</u>	<u>Task</u>	<u>Hours</u>	Rate	<u>Dollars</u>
1/14-	G. Jones	Eng. V	43.2	44.0	\$32.2	25 \$1,419.00
2/17/97						
Total Lab	or Task 43.2				\$ 1	,419.00
Overhead	@ 143.48%				\$ 2	2,035.98
Direct No	onsalary Costs:					
Cop	ies 23 at 3.5 ce	ents	\$	0.81		
Mile	eage 288 miles	at 31 cents		89.78		
Hote	el/Per Diem 1/	22-1/28		665.00		
Total Direct Nonsalary Costs		\$	755.09	\$	755.09	
Subconsu	ltants — None	this billing				
Profit @ 32.2% of Direct Labor				\$	456.92	
Total Tasl	k 43.2 This Bil	ling			\$ 4	,666.99
Billings F	Prior to This In	voice	\$30	9,654.32		
This Billi	ng			4,666.99		
Total Bill	ed to Date		\$31	4,321.31		
Task 43.2	Maximum		\$40	0,888.50		
Amount I	Left on Task 43	3.2	\$ 8	6,567.19		

*Note:* As with other examples shown in this guide, the use of the same or similar type format will not ensure the allowability of costs billed to the department.

For any item billed to WSDOT, the costs must be supported by source documentation, be reasonable, allowable, and allocable to the project.

Select costs may require advance approval from the contracting officer.

This example of a billing format is what WSDOT Audit would like to see. Individual contracting officers may have a format which varies from those shown above. Check with the contracting office for the format and details expected on a firm's billing.

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# Chapter 13 Development of Charge-Out Rates

### Development of Charge-Out Rates

### Chapter 13

This chapter addresses the development of charge-out rates for computer use, CADD, equipment, copies, etc.

### **Basic Requirements**

In order for in-house equipment usage or other costs to be billable directly to a WSDOT project, several conditions must be met. (This excludes mileage for automobiles and light trucks which must be billed out at the WSDOT Travel Directive D 13-50 rate per mile, or the actual rate, whichever is less.)

- 1. Maintenance and summarization of accounting records sufficient to prove the actual rate(s) for the in-house cost(s) to be charged.
- 2. Fully depreciated equipment requires a special advance agreement to allow any charge on the agreement.
- 3. Consistent application of charging the same in-house cost rates directly to all jobs by the consultant.

This means a record of total usage both direct and indirect (total hours, items, miles, and so forth) must be kept and total associated costs must be kept. Total costs divided by total usage would equal the appropriate rate. Only the total indirect usage is acceptable for inclusion in the consultant's overhead rate.

### Example:

For copies to be charged directly to an agreement, the consultant must maintain a record of the total copies used per year and divide this into total copier expenses. This may include copier lease or depreciation, repair and maintenance, supplies and labor. If any of the expenses are already in the consultant's overhead schedule, then the overhead schedule would have to be credited for the direct project cost amounts.

### **Market Rates Are Not Acceptable**

It is neither accurate nor acceptable to use a market rate as a charge rate. Nor to then credit overhead for the amount charged out on all agreements for two reasons:

- 1. Market rates are not actual cost because they include a profit.
- 2. The consultant's jobs may not identify all usage.

### Costs Not Allowed by Agreement (Contracts) or Clients

Consultants may encounter situations where a client does not allow the firm to bill all direct nonsalary costs incurred by the firm while working on a project. The situation may also exist where agreement dollar limits are being reached by the consultant, requiring them to make the choice of billing labor costs versus direct nonsalary costs.

In cases like those described above, those costs associated with the nonbilled direct nonsalary costs cannot be put into the firm's overhead. This would result in an inflated overhead rate being applied to WSDOT agreements. Any such costs identified by the auditor will be eliminated from the overhead account values, and the rate adjusted accordingly.

If you need more information on this subject, please contact the Audit Office.

### **FARs Discussion on Equipment Use Rates and Costs**

In regard to rates charged for fully depreciated equipment, FAR 48 CFR 31.109 Advance Agreements, Paragraph (h) states that "Examples of costs for which advance agreements may be particularly important are — (2) Use charges for fully depreciated assets;"

In regard to rates charged for construction equipment, FAR 48 CFR 31.105, Construction and architect-engineer contracts, Paragraph (d) states that "Except as otherwise provided in this paragraph, the allowability of costs for construction and architect-engineer contracts shall be determined in accordance with Subpart 31.2."

Subparagraph (2) goes on to say "Construction equipment as used in this section, means equipment (including marine equipment) in sound workable condition, either owned by or controlled by the contractor or the subcontractor at any tier, or obtained from a commercial rental source, and furnished for use under Government contracts."

- (i) "Allowable ownership and operating costs shall be determined as follows:"
  - (A) "Actual cost data shall be used when such data can be determined for both ownership and operations costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records. When such costs cannot be so determined, the contracting agency may specify the use of a particular schedule of predetermined rates or any part thereof to determine ownership and operating costs of construction equipment (see subdivisions (d)(2)(i)(B) and (C) of this section). However, costs otherwise unallowable under this part shall not become allowable through the use of any schedule (see 31.109(c)). For example, schedules need to be adjusted for Government contract costing purposes if they are based on replacement costs, include unallowable interest costs, or use improper cost of money rates or computations. Contracting officers should review the computations and factors included within the specified schedule and ensure that unallowable or unacceptable computed factors are not allowed in cost submissions."

- (B) "Predetermined schedules of construction equipment use rates (e.g., the Construction Equipment Ownership and Operating Expense Schedule, published by the U.S. Army Corps of Engineers, industry sponsored construction equipment cost guides, or commercially published schedules of construction equipment use cost), provide average ownership and operating rates for construction equipment. The allowance for operating costs may include costs for such items as fuel, filters, oil, and grease; servicing, repairs, and maintenance; and tire wear and repair. Costs of labor, mobilization, demobilization, overhead, and profit are generally not reflected in schedules, and separate consideration may be necessary."
- (C) "When a schedule of predetermined use rates for construction equipment is used to determine direct costs, all costs of equipment that are included in the cost allowances provided by the schedule shall be identified and eliminated from the contractor's other direct and indirect costs charged to the contract. If the contractor's accounting system provides for site or home office overhead allocations, all costs which are included in the equipment allowances may need to be included in any cost input base before computing the contractor's overhead rate. In periods of suspension of work pursuant to a contract clause, the allowance for equipment ownership shall not exceed an amount for standby cost as determined by the schedule or contract provision."
- (ii) "Reasonable costs of renting construction equipment are allowable. . ."

In regard to the prohibition from including direct costs in overhead, FAR 48 CFR 31.202 Direct Costs, states that

- (a) "A direct cost is any cost that can be identified specifically with a particular final cost objective. No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective. Costs identified specifically with the contract are direct costs of the contract and are to be charged directly to the contract. All costs specifically identified with other final cost objectives of the contractor are direct costs of those cost objectives and are not to be charged to the contract directly or indirectly."
- (b) "For reasons of practicality, any direct cost of minor dollar amount may be treated as an indirect cost if the accounting treatment
  - (1) Is consistently applied to all final cost objectives; and
  - (2) Produces substantially the same results as treating the cost as a direct cost."

## **Summary**

If you want to charge out computer time, photocopies, CADD, equipment, etc., have:

- The rate methodology documented.
- Costs used in the methodology supported in your records.
- Be consistent in charging directly to projects.
- Include only the net amount (after revenues) as indirect costs in overhead.

The costs billed in all cases will be reviewed by the auditor for reasonableness, allowability, and allocability to the WSDOT project.

Regardless of how billing rates are determined, all costs applicable to the equipment being billed must be removed from overhead accounts. This includes maintenance, depreciation, storage, insurance, and transportation costs.

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# Chapter 14 Related Party Transactions

# Chapter 14

# Related Party Transactions

Common control in related party transactions exists when business transactions are conducted at less than arm's length between businesses and/or persons that have a family or business relationship. Examples are transactions between family members, transactions between subsidiaries of the same parent company, or transactions between companies owned in whole or in part by the same person or persons.

Reference: 48 CFR 31.205-36 Rental Costs

Paragraph (b) "The following costs are allowable;"

Subparagraph (3) "Charges in the nature of rent for property between any divisions, subsidiaries, or organization under common control, to the extent that they do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, facilities capital cost of money, and maintenance (excluding interest or other unallowable costs pursuant to Part 31), provided that no part of such allowed costs shall duplicate any other allowed cost."

This criteria (cost principle) is used as a basis for rental costs. The principle identifies what is not allowed. Specifically, profit on rental transactions of property and/or equipment between organizations under common control. We find problems with unallowable rental profit being included in overhead rates more often in small businesses than in large ones.

#### **Common Problems**

The most common problem found by the auditor is when the consulting firm being audited pays rent for office, laboratory, or warehouse space and/or equipment to another firm owned in whole or in part by the owner, or directly to the owners, or family members of the owner of the consulting firm. WSDOT Audit considers common control to exist when ownership of either firm is put in the name of another family member, such as the spouse or children.

#### When Common Control is Found

Once common control is found, the auditor will need copies of financial statements and/or tax returns of the rental company. If the rental company has reported a profit, that portion of profit attributed to payments by the consulting firm in common control is unallowable for overhead. Costs that are unallowable in the consultant's overhead rate per FARs are also unallowable in calculating costs of the building.

In the case of space rent, the portion of unallowable profit in overhead is usually determined on a square footage basis. For instance, if 100 percent of available space is rented to the consulting firm being audited, than 100 percent of the profit is unallowable. If only 10 percent of the available space is used by the consulting firm, than 10 percent of the profit is unallowable.

If common control ownership is not 100 percent, than the actual percentage of ownership will be used to calculate the amount of unallowable common control point.

For equipment rentals, the amount of unallowable profit in overhead is determined on a case-by-case basis using a reasonable allocation of costs and revenues between the equipment rented under common control and equipment rented to other firms.

Once the amount of unallowable profit in rental payments has been determined, that amount will be shown as a reduction adjustment on the overhead schedule or to a direct billing charge for services.

# **Summary**

The common control issue is a complex problem. In many cases, input from legal counsel may be required in order to determine the final outcome of audit questions.

Should the auditor become aware of a situation that appears to be a common control issue, numerous questions will be asked. In addition, requests for documentation and information will be made of the firm which may not be considered relevant by the auditee based on their experience with a purely financial type audit.

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# Chapter 15 Single Audit Act

# Single Audit Act

# Chapter 15

In November 1995, Congress passed the National Highway System Designation Act (NHS). Section 307 of the Act, "Quality Through Competition," revised Section 112(b)(2) of Title 23, United Stated Code, which deals with contracting for engineering and design services.

This new section requires that agreements or subagreements for engineering and design services funded in whole or in part with federal aid highway funds be audited in accordance with the Federal Acquisition Regulations (Code of Federal Regulations, Title 48, Part 31). It also established the requirement that, instead of doing its own audits, a recipient of funds by an agreement or subagreement awarded in accordance with Section 112.A would accept indirect cost rates established by a cognizant federal or state government agency.

The new section states that "once a firm's indirect cost rates are accepted . . ., the recipient of the funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment and shall not be limited by administrative or de facto ceilings of any kind."

The major impact on WSDOT was that the agency eliminated the 165 percent cap on overhead rates that had been used for years. In cooperation with AASHTO and its member state departments of transportation, WSDOT had already been accepting and using indirect cost rate audits done by other federal and state agencies for several years. We continue to accept audited rates by federal and state agencies and by CPA firms when their workpapers have been reviewed by and their work accepted by a federal or state agency. We also provide indirect cost rate data on firms that we have audited to other federal and state agencies when asked to do so.

# Washington State

The Washington State Auditor's Office (SAO) is responsible for auditing state agencies, counties, cities, towns, school districts, ports, and other government agencies within the state. Under the Single Audit Act, they have to audit major federal programs directly. Therefore, virtually all expenditures of federal funds by government agencies in Washington are audited by SAO in their normal course of work. However, they do not specifically test a federal aid program unless it comes up in their sampling. It is assumed that if the agency's accounting systems and internal control structure are adequate, then control over expenditures of federal funds is also adequate and in compliance with the agreement or grant.

## **Actual Implication**

What this actually means is that Federal Highway Administration and Federal Transit Authority agreements and grants with government agencies in Washington State are not directly audited. For this reason, it is WSDOT policy to audit agreements and grants with private businesses with minimum expenditures of \$100,000 or more. Upon request by the contracting officer or other authority, we will also audit work conducted for local agencies by consultants when costs are less than \$100,000.

We audit these agreements with government agencies even though they are included in the single audit conducted by SAO. In this way, we are able to satisfy ourselves that the problems cited by the Health and Human Services Inspector General in his report on the Single Audit Act do not mask problems with transportation agreements and grants. These problems include (1) sample sizes that are too small to be representative of the population tested, (2) lack of testing to specific agreement and grant requirements, and (3) lack of auditing and monitoring of subrecipients.

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# Chapter 16 Auditor's Review of Internal Control

# Chapter 16

# Auditor's Review of Internal Control

When the WSDOT Audit Office conducts an audit (i.e., preaward, interim, special, or post), an internal control review and accounting system review are performed.

Government auditing standards require that: "A sufficient understanding of the internal control structure is to be obtained to plan the audit and to determine the nature, timing, and extent of tests to be performed."

The internal control structure consists of the control environment, accounting systems, and specific internal control procedures. Internal control is the responsibility of the consultant's management. The policies and procedures that consultant management establish for the firm determine the internal control structure. Once the auditor obtains an understanding of the internal control structure of the consultant, a written report is made part of the audit report.

Unless we are relying on work done by another auditor, the auditor conducts an internal control review using an internal control questionnaire. This questionnaire discusses the following general areas of the consultants' accounting system: general controls; cash receipts; cash disbursements; bank reconciliations; accounts receivable; accounts payable; inventories; property, plant and equipment; purchasing and receiving; and, payroll. Questions are asked in a yes, no, or not applicable format. Normally, it does not take long to answer the questions as they pertain to the consultant's accounting system.

Audit tests during the audit process are used to verify that the conditions as reported exist within the organization.

During each succeeding audit we perform of the consultant, the internal control questionnaire is updated. This lets us know if any changes have been made to the internal control structure since the last time we audited the consultant. There are instances where we have audited a consultants' complete fiscal year and the consultant has been awarded additional agreements from WSDOT. In this instance, we can rely on the previous internal control review.

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# Chapter 17 WSDOT Standard Agreements

# Chapter 17

# WSDOT Standard Agreements

Some organizations have legal services within their operation. Others acquire such services on an as need basis, usually after getting into contractual problems.

We have included copies of standard WSDOT consultant agreements.

We highly recommend that when entering into an agreement with WSDOT, that someone of authority and those close to the agreement read the complete agreement!

It may save you trouble in the end.

In order for you to become familiar with the types of agreements used by WSDOT, we have provided the following:

- · Cost Plus a Fixed Fee
- · Negotiated Hourly Rates
- Task Order Negotiated Hourly Rates
- Provisional Hourly Rates
- Task Order Provisional Hourly Rates
- Lump Sum

Negotiated hourly rate and provisional hourly rate agreements may also be called all-inclusive hourly rate agreements.

If prior to signing the agreement or if during the course of performing the work the firm has any questions regarding the eligibility of costs or procedures for doing something, contact the WSDOT consultant coordinator for an explanation!

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# 1999 Professional Services Consultant Agreement — Cost Plus a Fixed Fee

1999 PROFESSIONAL SERVICES CONSULTANT AGREEMENT COST PLUS A FIXED FEE		Organization and Address	
Agreement Number		Federal I.D. or S.S. Number	1099 Form Required  YES NO
Completion Date	Federal Aid Number (If Applicable)	Unified Business Identifer (UBI) Number	Fixed Fee
Overhead Progress Payme Overhead Method	tate	Project Title and Description of Wor	rk:
DBE Participation  YES NO%  MBE Participation (Voluntary)  YES NO%  WBE Participation (Voluntary)  YES NO%		Total Amount Authroized  Management Reserve Fund  Maximum Amount Payable	
the Washington State Departmereinafter called the "CONSIWITNESSETH THAT: WHEREAS, the STATE desir WHEREAS, the STATE does assistance of a CONSULTAN WHEREAS, the CONSULTA Applicable, and has signified a	nent of Transportation and the Secretary of ULTANT".  Trees to accomplish the above referenced P not have sufficient staff to meet the required to provide the necessary services for the NT represents that he/she is in compliant a willingness to furnish Consulting service deration of the terms, conditions, covena	PROJECT, and  fired commitment and therefore deems it the PROJECT; and  fince with the Washington State Statutes reces to the STATE,	"STATE", and the above organization t advisable and desirable to engage the relating to professional registration, if
	General De IENT shall consist of the above described CONSULTANT shall furnish all service		

#### II Scope of Work

The Scope of Work and projected level of effort required for this project is detailed in Exhibit "B" attached hereto, and by this reference made a part of this AGREEMENT

#### III

#### **General Requirements**

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the STATE. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the STATE. The CONSULT-ANT shall attend coordination, progress and presentation meetings with the STATE or such Federal, Community, city or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the STATE and the CONSULT-ANT and shown in Exhibit "B" attached hereto and made part of this Agreement. The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women Business Enterprises (WBE) if required, shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "E". All reports, PS&E materials and other data, furnished to the CONSULTANT by the STATE shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT and are property of the STATE. Reuse by the STATE or by others acting through or on behalf of the STATE of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

#### IV

#### Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE, in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

#### V

#### Payment

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work". The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

A. Actual Costs: Payment for all consulting services for this project shall be on the basis of the CONSULTANT's actual cost plus a fixed fee. The actual cost shall include direct salary cost, overhead, direct nonsalary costs and fixed fee.

2

- Direct Salary Costs: The direct salary cost is the direct salary paid to principals, professional, technical, and clerical personnel for the time they are productively engaged in work necessary to fulfill the terms of this AGREEMENT. The CONSULTANT shall maintain support data to verify the direct salary costs billed to the STATE.
- 2. Overhead Costs: Overhead costs are those costs other than direct costs which are included as such on the books of the CONSULT-ANT in the normal everyday keeping of its books. Progress payments shall be made at the rate shown in the heading of this AGREEMENT under "Overhead Progress Payment Rate". Total overhead payment shall be based on the method shown in the heading of the AGREEMENT. The two options are explained as follows:
  - a. Fixed Rate: If this method is indicated in the heading of the AGREEMENT the STATE agrees to reimburse the CON-SULTANT for overhead at the percentage rate shown. This rate shall not change during the life of the AGREEMENT.
  - b. Actual Cost: If this method is indicated in the heading of the AGREEMENT the STATE agrees to reimburse the CON-SULTANT the actual overhead costs verified by audit, up to the maximum total amount payable, authorized under this AGREEMENT, when accumulated with all other actual costs.

A summary of the CONSULTANT's cost estimate and the overhead computation are attached hereto as Exhibit "C" and by this reference made part of this AGREEMENT. When an Actual Cost method is used, the CONSULTANT (prime and all subconsultants) will submit to the STATE within six (6) months after the end of each firm's fiscal year, an overhead schedule in the format required by the STATE (cost category, dollar expenditures, etc.) for the purpose of adjusting the overhead rate for billing purposes. It shall be used for the computation of progress payments during the following year and for retroactively adjusting the previous year's overhead cost to reflect the actual rate. This information will be sent to the Consultant Service's Office.

FAILURE TO SUPPLY THIS INFORMATION BY EITHER THE PRIME CONSULTANT OR ANY OF THE SUBCONSULTANTS SHALL CAUSE THE STATE TO WITHHOLD PAYMENT OF THE BILLED OVERHEAD COSTS UNTIL SUCH TIME AS THE REQUIRED INFORMATION IS RECEIVED AND AN OVERHEAD RATE FOR BILLING PURPOSES IS APPROVED.

The STATE and/or the Federal Government may perform an audit of the CONSULTANT's books and records at any time during regular business hours to determine the actual overhead rate, if they so desire.

3. Direct Non-Salary Costs: Direct non-salary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the STATE. The CONSULTANT shall comply with the rules and regulations regarding travel costs in accordance with the STATE Department of Transportation Directive D13-50 and revisions thereto. The billing for direct non-salary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the

original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the services provided under this AGREEMENT.

- Fixed Fee: The fixed fee, which represents the CONSULTANT's profit, is shown in the heading of this AGREEMENT under Fixed Fee. This amount does not include any additional fixed fee which could be authorized from the Management Reserve Fund. This fee is based on the scope of work defined in this agreement and the estimated man-months required to perform the stated scope of work. In the event a supplemental agreement is entered into for additional work by the CONSULTANT, the supplemental agreement may include provisions for the added costs and an appropriate additional fee. The fixed fee will be pro-rated and paid monthly in proportion to the percentage of work completed by the CONSULTANT and reported in the monthly progress reports accompanying the invoices. Any portion of the fixed fee earned but not previously paid in the progress payments will be covered in the final payment, subject to the provisions of Section IX entitled "Termination of Agreement."
- 5. Management Reserve Fund: The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV. "Extra Work".
- 6. MaximumTotal Amount Payable: The MaximumTotal Amount Payable, by the STATE to the CONSULTANT under this AGREEMENT, shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Total Amount Authorized, which includes the Fixed Fee and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for extra work as stipulated in Section XIV, "Extra Work."
- B. Monthly Progress Payments: The CONSULTANT may submit invoices to the STATE for reimbursement of actual costs plus the calculated overhead and fee not more often than once per month during the progress of the work. Such invoices shall be in a format approved by the STATE and accompanied by the monthly progress reports required under GENERAL REQUIREMENTS, of this AGREEMENT. The invoices will be supported by itemized listing for each item including direct salary, direct non-salary and allowable overhead costs to which will be added the pro-rated Fixed Fee. To provide a means of verifying the invoiced salary costs for CONSULTANT employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles salary rates and present duties of those employees performing work on the PROJECT at the time of the interview.
- C. Final Payment: Final payment of any balance due the CONSULT-ANT of the gross amount earned will be made promptly upon its verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all

claims for payment which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and that at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayment to the STATE within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

D. Inspection of Cost Records: The CONSULTANT and his/her sub-consultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three years after final payment, the cost records and accounts pertaining to this AGREE-MENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

### Subcontracting

The STATE permits subcontracts for those items of work as shown in Exhibit "D" to this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "D", attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultants shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

#### VII Employment

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

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Audit Guide for Consultants August 1999 Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

#### VIII

#### Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. Compliance With Regulations: The CONSULTANT shall comply with all Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the Civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. Solicitations for Subconsultants, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.
- D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives

issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - 1. Withholding of payments to the CONSULTANT under the contact until the CONSULTANT complies, and/or
  - Cancellation, termination or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- G. Unfair Employment Practices: The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O.77-13 of the Governor of the State of Washington which prohibit unfair employment practices.

#### IX Termination of Agreement

The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT which, when added to any payments previously made, shall total the actual costs plus the same percentage of the Fixed Fee as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the STATE for any excess paid.

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULT-ANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination; the cost to the STATE of employing another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

#### X Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

#### XI Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging the Secretary's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation Consultant Service's Procedures Manual M27-50 and revisions thereto.

#### XII

#### Venue, Applicable Law and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

#### XIII Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREE-MENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law. Title 51 BCW

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

Insurance Coverage

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- Worker's compensation and employer's liability insurance as required by the STATE.
- Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for

bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).

C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit. (Applicable only if CONSULTANT if using WSDOT vehicle.)

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washington, Department of Transportation will be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by this AGREE-MENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Consultant Administrator Washington State Department of Transportation Transportation Building P.O. Box 47323 Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT's professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

#### XIV Extra Work

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30 days) from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a claim submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and conditions of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall

not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

#### XV

#### **Endorsement of Plans**

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

#### XVI Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

#### xvII

#### Certification of the Consultant and the State

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the STATE, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in AGREEMENTS over \$100,000.

## XVIII

Complete Agreement

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

#### XIX Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

Sy\_\_\_\_\_

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

Assistant Secretary for the Environmental and Engineering Service Center

Any modification, change or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

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By

# 1999 Professional Services Consultant Agreement — Negotiated Hourly Rates

1999 PROFESSIONAL SERVICES CONSULTANT AGREEMENT NEGOTIATED HOURLY RATES		Organization and Address	
Agreement Number		Federal I.D. or S.S. Number	1099 Form Required?  YES NO
Completion Date	Federal Aid Number (If Applicable)	Project Title and Description of Work:	
Unified Business Identifier (	UBI) Number		
MBE Participation (Volunt YES  WBE Participation (Volunt  WBE Participation (Volunt  YES	NO%	Total Amount Authorized  Management Reserve Fund  Maximum Amount Payable	
the Washington State Department hereinafter called the "CONSUL	nt of Transportation and the Secretary of	, 1999, between the f Transportation, hereinafter called the t	
WHEREAS, the STATE desires	s to accomplish the above referenced P	PROJECT and	
WHEREAS, the STATE does no	-	ired commitment and therefore deems it	advisable and desirable to engage the
	IT represents that he/she is in compliar willingness to furnish Consulting service	nce with the Washington State Statutes reces to the STATE.	elating to professional registration, if
	2	ants and performance contained herein, o	r attached and incorporated and made
NOW THEREFORE, in consider a part hereof, the parties hereto	agree as removed		
a part hereof, the parties hereto  The work under this AGREEME work for this PROJECT. The C	General De ENT shall consist of the above described ONSULTANT shall furnish all service	I escription of Work work and services as herein defined and n es, labor and related equipment necessary	
a part hereof, the parties hereto  The work under this AGREEME work for this PROJECT. The C designated elsewhere in this AC	General De ENT shall consist of the above described CONSULTANT shall furnish all service GREEMENT. Sco	escription of Work work and services as herein defined and n	to conduct and complete the work as

#### III General Requirements

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the STATE. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the STATE. The CONSULT-ANT shall attend coordination, progress and presentation meetings with the STATE or such Federal, Community, city or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the STATE and the CONSULT-ANT and shown in Exhibit "B". The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women Business Enterprises (WBE) if required, shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "E." All Reports, PS&E materials and other data, furnished to the CONSULT-ANT by the STATE shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULT-ANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are property of the STATE. Reuse by the STATE or by others acting through or on behalf of the STATE of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULT-ANT.

#### IV

#### Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE, in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

#### V Payment

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

 Hourly Rates: The CONSULTANT shall be paid by the STATE for work done, based upon the negotiated hourly rates shown in Exhibit C attached hereto and by this reference made part of this AGREE-MENT. The rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the STATE. If negotiations are not conducted for the second, or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREE-MENT, or subsequent written authorization(s) from the STATE shall be utilized for the life of the AGREEMENT. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.

- 2. Direct Non-Salary Costs: Direct nonsalary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the STATE. The CONSULTANT shall comply with the rules and regulations regarding travel costs in accordance with the STATE Department of Transportation Directive D13-50 and revisions thereto. The billing for direct nonsalary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the services provided under this AGREEMENT.
- . Management Reserve Fund: The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this Agreement. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work".
- Maximum Amount Payable: The maximum amount payable for completion of work under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable includes the Management Reserve Fund, but does not include payment for extra work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREE-MENT
- 5. Monthly Progress Payments: Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibit "C", including names and classifications of all employees, and invoices for all direct nonsalary expenses. To provide a means of verifying the invoiced salary costs for the CONSULTANT's employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates and present duties of those employees performing work on the PROJECT at the time of the interview.
- i. Inspection of Cost Records: The CONSULTANT and his/her sub-consultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three years after final payment, the cost records and accounts pertaining to this AGREE-MENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit is started before the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three year retention period begins when the CONSULTANT receives final payment.
- Final Payment: Final payment of any balance due the CONSULT-ANT of the gross amount earned will be made promptly upon its

verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULT-ANT, the CONSULTANT will refund such overpayment to the STATE within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT or any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

#### VI

#### Subcontracting

The STATE permits subcontracts for those items of work as shown in Exhibit "D" to this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "D", attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct nonsalary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this Agreement.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

#### VII Employment

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission

on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

#### VIII

#### Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services.

The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. Compliance with Regulations: The CONSULTANT shall comply with all regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the Civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. Solicitations for Subconsultants, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.
- D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives.

Audit Guide for Consultants August 1999 Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or
  - 2. Cancellation, termination or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.
- G. Unfair Employment Practices: The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O.77-13 of the Governor of the State of Washington which prohibit unfair employment practices.

#### IX Termination of Agreement

The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at time of termination of this AGREEMENT, plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the STATE for any excess paid.

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULT-ANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination; the cost to the STATE of employing another firm to complete the work required and the time which maybe required to do so,

and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

#### X Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

#### XI Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging the Secretary's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation Consultant Service's Procedures Manual M27-50 and revisions thereto.

#### XII

#### Venue, Applicable Law and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right

of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

#### XIII Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREE-MENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

Insurance Coverage

- Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit. (Applicable only if CONSULTANT is using WSDOT vehicle.)

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washing-

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ton, Department of Transportation will be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by the AGREE-MENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Consultant Administrator Washington State Department of Transportation Transportation Building P.O. Box 47323 Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT's professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the Consultant has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

#### XIV Extra Work

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a claim submitted before final payment of the AGREE-MENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and condition of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

#### X

#### **Endorsement of Plans**

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

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#### XVI

#### Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

#### XVII

#### Certification of the Consultant and the State

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the STATE, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in AGREEMENTS over \$100.000.

#### XVIII

#### Complete Agreement

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

#### XIX

#### **Execution and Acceptance**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

<u>By</u> \_\_\_\_\_\_ By

Assistant Secretary for the Environmental and Engineering Service Center

Any modification, change or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

# 1999 Professional Services Consultant Agreement Task Order — Negotiated Hourly Rates

1999 PROFESSIONAL SERVICES CONSULTANT AGREEMENT TASK ORDER NEGOTIATED HOURLY RATES		Organization and Address	
Agreement Number		Federal I.D. or S.S. Number	1099 Form Required?
Completion Date	Federal Aid Number	Unified Business Identifier (UBI) Number	
(If Applicable)		Project Title and Description of World	k:
DBE Participation YES MBE Participation (Volum	NO%		
YES NO%		Total Amount Authorized	
WBE Participation (Volume YES	ntary)%	Management Reserve Fund  Maximum Amount Payable	
THIS AGREEMENT, made an the Washington State Departm hereinafter called the "CONSU	ent of Transportation and the Secretary	, 1999, between th of Transportation, hereinafter called the "	ne State of Washington, acting through 'STATE", and the above organization
WITNESSETH THAT:	res to accomplish the above referenced	DDOIECT and	
WHEREAS, the STATE does to	•	uired commitment and therefore deems it	advisable and desirable to engage the
	NT represents that he/she is in complia willingness to furnish Consulting serv	ance with the Washington State Statutes relices to the STATE.	elating to professional registration, if
	deration of the terms, conditions, coven o agree as follows:	nants and performance contained herein, or	r attached and incorporated and made
	IENT shall consist of the above described CONSULTANT shall furnish all service	I Description of Work d work and services as herein defined and n ces, labor and related equipment necessary	
The Seepe of Work for this pr		II ope of Work d hereto, and by this reference made a par	t of this AGREEMENT.
The Scope of Work for this pr			

Each item of work under this AGREEMENT will be provided by Task Assignment(s). Each assignment will be individually negotiated with the CONSULTANT. The amount established for each assignment will be the maximum amount payable for that assignment unless modified in writing by the STATE.

#### III General Requirements

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the STATE. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the STATE. The CONSULT-ANT shall attend coordination, progress and presentation meetings with the STATE or such Federal, Community, city or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the STATE and the CONSULT-ANT and shown in Exhibit "B". The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women Business Enterprises (WBE) if required, shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "E". All Reports, PS&E materials and other data, furnished to the CONSULT-ANT by the STATE shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULT-ANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are property of the STATE. Reuse by the STATE or by others acting through or on behalf of the STATE of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULT-

#### IV

### Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE, in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

#### V

#### Payment

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

 Hourly Rates: The CONSULTANT shall be paid by the STATE for work done, based upon the negotiated hourly rates shown in Exhibit "C" attached hereto and by this reference made part of this AGREE-MENT. The rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the STATE. If negotiations are not conducted for the second, or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREE-MENT, or subsequent written authorization(s) from the STATE shall be utilized for the life of the AGREEMENT. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.

In the event renegotiation of the hourly rates is conducted, the STATE reserves the right to audit for any change in the overhead rate currently in use by the CONSULTANT and modify the hourly rates to be paid to the CONSULTANT subsequent to the renegotiation accordingly. Any changes in the CONSULTANT's fixed hourly rates may include salary or overhead adjustments.

- . Direct Non-Salary Costs: Direct non-salary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the STATE. The CONSULT-ANT shall comply with the rules and regulations regarding travel costs in accordance with the STATE Department of Transportation Directive D 13-50 and revisions thereto. The billing for direct nonsalary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the services provided under this AGREEMENT.
- 8. Management Reserve Fund: The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this Agreement. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work".
- 4. Maximum Amount Payable: The maximum amount payable for completion of work under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable includes the Management Reserve Fund, but does not include payment for extra work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREE-MENT.
- 5. Monthly Progress Payments: Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibit "C", including names and classifications of all employees, and invoices for all direct non-salary expenses. To provide a means of verifying the invoiced salary costs for the CONSULTANT's employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates and present duties of those employees performing work on the PROJECT at the time of the interview.

- Inspection of Cost Records: The CONSULTANT and his/her subconsultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three years after final payment, the cost records and accounts pertaining to this AGREE-MENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit is started before the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three (3) year retention period begins when the CONSULTANT receives final payment.
- Final Payment: Final payment of any balance due the CONSULT-ANT of the gross amount earned will be made promptly upon its verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULT-ANT, the CONSULTANT will refund such overpayment to the STATE within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT or any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

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The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent

upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation  $or the \,STATE, except \, regularly \, retired \, employees, \, without \, written \, consent$ of the public employer of such person.

#### Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services.

The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- Compliance with Regulations: The CONSULTANT shall comply with the Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the Civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- Solicitations for Subconsultants, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified

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Audit Guide for Consultants August 1999 by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.

D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives.

Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

- E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or
  - Cancellation, termination or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULT-ANT may request the United States to enter into such litigation to protect the interests of the United States.
- G. Unfair Employment Practices: The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O.77-13 of the Governor of the State of Washington which prohibit unfair employment practices.

#### IX

#### Termination of Agreement

The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at time of termination of this AGREEMENT, plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the

CONSULTANT shall immediately reimburse the STATE for any excess paid.

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULT-ANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination; the cost to the STATE of employing another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

#### X Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

#### XI Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this

AGREEMENT, provided however, that if an action is brought challenging the Secretary's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation Consultant Service's Procedures Manual M27-50 and revisions thereto.

#### XII

#### Venue, Applicable Law and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

#### XIII Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREE-MENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULT-ANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

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Insurance Coverage

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- Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit. (Applicable only if CONSULTANT is using WSDOT vehicle.)

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washington, Department of Transportation will be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by the AGREE-MENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Consultant Administrator Washington State Department of Transportation Transportation Building P.O. Box 47323 Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT's professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the Consultant has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

#### XIV Extra Work

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a claim submitted before final payment of the AGREE-MENT

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- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and condition of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

#### XV

#### **Endorsement of Plans**

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

#### XVI

#### Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

#### XVII

#### Certification of the Consultant and the State

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the STATE, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in AGREEMENTS over \$100,000.

#### XVIII

#### Complete Agreement

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

#### XIX

#### Execution and Acceptance

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

By By

Assistant Secretary for the Environmental and Engineering Service Center

Any modification, change or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

# 1999 Professional Services Consultant Agreement — Provisional Hourly Rates

1999 PROFESSIONAL SERVICES CONSULTANT AGREEMENT PROVISIONAL HOURLY RATES		Organization and Address		
Agreement Number		Federal I.D. or S.S. Number	1099 Form Required?	
		Unified Business Identifier (UBI) Number		
Completion Date	Completion Date Federal Aid Number (If Applicable)		Project Title and Description of Work:	
DBE Participation YES	NO%			
MBE Participation (Voluntary)  YES NO%  WBE Participation (Voluntary)  YES NO%		Total Amount Authorized  Management Reserve Fund  Maximum Amount Payable		
		, 1999, between th , 1999, between th of Transportation, hereinafter called the "	e State of Washington, acting through STATE", and the above organization	
WHEREAS, the STATE does no	to accomplish the above referenced F ot have sufficient staff to meet the requ to provide the necessary services for t	nired commitment and therefore deems it	advisable and desirable to engage the	
	T represents that he/she is in compliantial represents to furnish Consulting services.	nce with the Washington State Statutes reces to the STATE.	elating to professional registration, if	
NOW THEREFORE, in conside a part hereof, the parties hereto a		ants and performance contained herein, or	attached and incorporated and made	
	NT shall consist of the above described ONSULTANT shall furnish all service	I escription of Work work and services as herein defined and ness, labor and related equipment necessary		
The Scope of Work for this proj		II pe of Work hereto, and by this reference made a part	t of this AGREEMENT.	

#### Ш **General Requirements**

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the STATE. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the STATE. The CONSULT-ANT shall attend coordination, progress and presentation meetings with the STATE or such Federal, Community, city or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the STATE and the CONSULT-ANT and shown in Exhibit "B". The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women Owned Business Enterprises (WBE) if required, shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "E." All Reports, PS&E materials and other data, furnished to the CONSULT-ANT by the STATE shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULT-ANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are property of the STATE. Reuse by the STATE or by others acting through or on behalf of the STATE of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULT-ANT.

#### IV

#### Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE, in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

## v

#### **Payment**

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform with all applicable protions of 48 CFR 31.

Hourly Rates: The CONSULTANT shall be paid by the STATE for work done based upon the provisional hourly rates shown in Ehibit "C" attached hereto and by this reference made part of this AGREE-MENT. The actual hourly rates will be determined by an audit of the CONSULTANT's last completed fiscal year and/or their current projected fiscal year. The provisional and/or audited rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the STATE. If negotiations are not conducted for the second, or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREEMENT, or subsequent written

authorization(s) from the STATE shall be utilized for the life of the AGREEMENT. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.

In the event renegotiation of the hourly rates is conducted, the STATE reserves the right to audit for any change in the overhead rate currently in use by the CONSULTANT and modify the hourly rates to be paid to the CONSULTANT subsequent to the renegotiation accordingly. Any changes in the CONSULTANT's fixed hourly rates may include salary or overhead adjustments.

- Direct Non-Salary Costs: Direct non-salary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the STATE. The CONSULT-ANT shall comply with the rules and regulations regarding travel costs in accordance with the STATE Department of Transportation Directive D13-50 and revisions thereto. The billing for direct nonsalary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the services provided under this AGREEMENT.
- Management Reserve Fund: The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREE-MENT for allowable unforeseen costs, or reimbursing the CON-SULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this Agreement. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work".
- Maximum Amount Payable: The maximum amount payable for completion of work under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable includes the Management Reserve Fund, but does not include payment for extra work as stipulated in Section XIV, "Extra Work." No minimum amount payable is guaranteed under this AGREE-
- Monthly Progress Payments: Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibit "C", including names and classifications of all employees, and invoices for all direct non-salary expenses. To provide a means of verifying the invoiced salary costs for the CONSULTANT's employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates and present duties of those employees performing work on the PROJECT at the time of the interview
- Inspection of Cost Records: The CONSULTANT and his/her subconsultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three (3) years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit is started

before the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three (3) year retention period begins when the CONSULTANT receives final payment.

Final Payment: Final payment of any balance due the CONSULT-ANT of the gross amount earned will be made promptly upon its verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULT-ANT, the CONSULTANT will refund such overpayment to the STATE within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT or any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

## Subcontracting

The STATE permits subcontracts for those items of work as shown in Exhibit "D "to this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "D", attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this Agreement.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

### **Employment**

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein. shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation  $or the \, STATE, except \, regularly \, retired \, employees, \, without \, written \, consent$ of the public employer of such person.

#### VIII

#### Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services.

The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- Compliance with Regulations: The CONSULTANT shall comply with all Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710,405(b) and Title VI of the Civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations
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Audit Guide for Consultants August 1999

D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives.

Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

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The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at time of termination of this AGREEMENT, plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the STATE for any excess paid.

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULT-ANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination; the cost to the STATE of employing another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

#### Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

#### X1 Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging the Secretary's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation Consultant Service's Procedures Manual M27-50 and revisions thereto.

#### XII

#### Venue, Applicable Law and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

#### XIII Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREE-MENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided turther that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULT-ANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for

bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).

C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit. (Applicable only if CONSULTANT is using WSDOT vehicle.)

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washington, Department of Transportation will be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by the AGREE-MENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14 days) of the execution of this AGREEMENT to:

Consultant Administrator Washington State Department of Transportation Transportation Building P.O. Box 47323 Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT's professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million dollars (\$1,000,000), whichever is the greater. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the Consultant has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

### Extra Work

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be perferenced.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a claim submitted before final payment of the AGREE-MENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.

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E. Notwithstanding the terms and condition of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

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#### **Endorsement of Plans**

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

#### XVI

#### Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

#### XVII

#### Certification of the Consultant and the State

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the STATE, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in AGREEMENTS over \$100,000.

#### XVIII

#### Complete Agreement

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

#### XIX

#### **Execution and Acceptance**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

Ву	Ву
	Assistant Secretary for the Environmental and Engineering Service Center

Any modification, change or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

### 1999 Professional Services Consultant Agreement Task Order — Provisional Hourly Rates

1999 PROFESSIONAL SERVICES CONSULTANT AGREEMENT TASK ORDER PROVISIONAL HOURLY RATES		Organization and Address		
Agreement Number		Federal I.D. or S.S. Number	1099 Form Required?  YES NO	
Unified Business Identifier (UBI	) Number	Project Title and Description of Work:		
Completion Date Federal Aid Number (If Applicable)		!		
DBE Participation YES  MBE Participation (Voluntary) YES  WBE Participation (Voluntary) YES	NO% NO%	Total Amount Authorized  Management Reserve Fund  Maximum Amount Payable		
	Transportation and the Secretary	, 1999, between the of Transportation, hereinafter called the "		
WHEREAS, the STATE desires to a WHEREAS, the STATE does not has assistance of a CONSULTANT to p	ve sufficient staff to meet the requ	uired commitment and therefore deems it a	ndvisable and desirable to engage the	
WHEREAS, the CONSULTANT re		nce with the Washington State Statutes reces to the STATE.	lating to professional registration, if	
NOW THEREFORE, in consideration part hereof, the parties hereto agree		ants and performance contained herein, or	attached and incorporated and made	
	shall consist of the above described SULTANT shall furnish all service	I escription of Work I work and services as herein defined and ne es, labor and related equipment necessary		
The Scope of Work for this project i		II pe of Work hereto, and by this reference made a part	of this AGREEMENT.	

Each item of work undert this AGREEMENT will be provided by Task Assignment(s). Each assignment will be individually negotiated with the CONSULTANT. The amount established for each assignment will be the maximum amount payable for that assignment unless modified in writing by the STATE.

#### **General Requirements**

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the STATE. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the STATE. The CONSULT-ANT shall attend coordination, progress and presentation meetings with the STATE or such Federal, Community, city or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the STATE and the CONSULT-ANT and shown in Exhibit "B". The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women Business Enterprises (WBE) if required, shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each firm and their certification number will be shown on Exhibit "E" All Reports, PS&E materials and other data, furnished to the CONSULT-ANT by the STATE shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULT-ANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT, and are property of the STATE. Reuse by the STATE or by others acting through or on behalf of the STATE of any such instruments of service, not occurring as a part of this PROJECT, shall be without liability or legal exposure to the CONSULT-ANT.

#### Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE, in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

#### Payment

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work. The CONSULTANT shall conform with all applicable portions of 48 CFR 31.

Hourly Rates: The CONSULTANT shall be paid by the STATE for work done, based upon the provisional hourly rates shown in Exhibit "C" attached hereto and by this reference made part of this AGREE-MENT. The actual hourly rates will be determined by an audit of the CONSULTANT's last completed fiscal year and/or their current projected fiscal year. The provisional and/or audited rates listed shall be applicable for the first twelve (12) month period and shall be subject to negotiation for the following twelve (12) month period upon request of the CONSULTANT or the STATE. If negotiations are not conducted for the second, or subsequent twelve (12) month periods within ninety (90) days after completion of the previous period, the rates listed in this AGREEMENT, or subsequent written authorization(s) from the STATE shall be utilized for the life of the AGREEMENT. The rates are inclusive of direct salaries, payroll additives, overhead, and fee. The CONSULTANT shall maintain support data to verify the hours billed on the AGREEMENT.

In the event renegotiation of the hourly rates is conducted, the STATE reserves the right to audit for any change in the overhead rate currently in use by the CONSULTANT and modify the hourly rates to be paid to the CONSULTANT subsequent to the renegotiation accordingly. Any changes in the CONSULTANT's fixed hourly rates may include salary or overhead adjustments.

- Direct Non-Salary Costs: Direct non-salary costs will be reimbursed at the actual cost to the CONSULTANT. These charges may include, but are not limited to the following items: travel, printing, long distance telephone, supplies, computer charges and fees of subconsultants. Air or train travel will only be reimbursed to economy class levels unless otherwise approved by the STATE. The CONSULT-ANT shall comply with the rules and regulations regarding travel costs in accordance with the STATE Department of Transportation Directive D13-50 and revisions thereto. The billing for direct nonsalary costs shall include an itemized listing of the charges directly identifiable with the PROJECT. The CONSULTANT shall maintain the original supporting documents in their office. Copies of the original supporting documents shall be supplied to the STATE upon request. All above charges must be necessary for the services provided under this AGREEMENT.
- Management Reserve Fund: The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREE-MENT. Such authorization(s) shall be in writing and shall not exceed the lesser of \$50,000 or 10% of the Total Amount Authorized as shown in the heading of this AGREEMENT. The amount included for the Management Reserve Fund is shown in the heading of this AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work".
- Maximum Amount Payable: The maximum amount payable for completion of work under this AGREEMENT shall not exceed the amount shown in the heading of this AGREEMENT. The maximum amount payable includes the Management Reserve Fund, but does not include payment for extra work as stipulated in Section XIV, "Extra Work. "No minimum amount payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this AGREE-this agreement with the payable is guaranteed under this agreement with the payable is guaranteed under theMENT.
- Monthly Progress Payments: Progress payments may be claimed on a monthly basis for all costs authorized in 1 and 2 above. The monthly invoices shall be supported by detailed statements for hours expended at the rates established in Exhibit "C", including names and classifications of all employees, and invoices for all direct non-salary expenses. To provide a means of verifying the invoiced salary costs for the CONSULTANT's employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates and present duties of those employees performing work on the PROJECT at the time of the interview.

- 6. Inspection of Cost Records: The CONSULTANT and his/her subconsultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three (3) years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit is started before the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The three (3) year retention period begins when the CONSULTANT receives final payment.
- 7. Final Payment: Final payment of any balance due the CONSULT-ANT of the gross amount earned will be made promptly upon its verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULT-ANT, the CONSULT-ANT will refund such overpayment to the STATE within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the CONSULTANT or any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

#### VI Subcontracting

The STATE permits subcontracts for those items of work as shown in Exhibit "D" to this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "D", attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultant shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this Agreement.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

#### VII Employment

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent

upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

#### VIII

#### Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services.

The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. Compliance with Regulations: The CONSULTANT shall comply with all Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. Solicitations for Subconsultants, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified

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by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handican.

D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives.

Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

- Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - 1. Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, and/or
  - Cancellation, termination or suspension of the contract, in whole
- Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULT-ANT may request the United States to enter into such litigation to protect the interests of the United States.
- Unfair Employment Practices: The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O.77-13 of the Governor of the State of Washington which prohibit unfair employment practices.

#### Termination of Agreement

The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT for actual hours charged at time of termination of this AGREEMENT, plus any direct nonsalary costs incurred at the time of termination of this AGREEMENT.

No payment shall be made for any work completed after ten (10) days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the

CONSULTANT shall immediately reimburse the STATE for any excess

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULT-ANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination; the cost to the STATE of employing another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULT-ANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

#### Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

#### Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging

the Secretary's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation Consultant Service's Procedures Manual M27-50 and revisions thereto.

#### XII

#### Venue, Applicable Law and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

#### XIII Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREE-MENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law. Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

Insurance Coverage

01/99

- Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit. (Applicable only if CONSULTANT is using WSDOT vehicle.)

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washington, Department of Transportation will be named on all policies as an additional insured. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by the AGREE-MENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Consultant Administrator Washington State Department of Transportation Transportation Building P.O. Box 47323 Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT's professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the Consultant has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

#### XIV Extra Work

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit any "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a claim submitted before final payment of the AGREE-MENT.

Audit Guide for Consultants August 1999

- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- Notwithstanding the terms and condition of paragraphs (A) and (B) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

#### **Endorsement of Plans**

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

#### Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

#### XVII

#### Certification of the Consultant and the State

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the STATE, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in AGREEMENTS over \$100,000.

#### XVIII

#### Complete Agreement

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREEMENT.

#### **Execution and Acceetance**

This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The CONSULTANT does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the proposal, and the supporting materials submitted by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms and conditions thereof.

In witness whereof, the parties hereto have executed this AGREEMENT as of the day and year first above written.

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

Ву	Ву
	Assistant Secretary for the
	Environmental and Engineering Service Center

Any modification, change or reformation of this AGREEMENT shall require approval as to form by the Office of the Attorney General.

### 1999 Professional Services Consultant Agreement — Lump Sum

1999 PROFESSIONAL SERVICES CONSULTANT AGREEMENT LUMP SUM		Organization and Address				
Agreement Number		Federal I.D. or S.S. Number	1099 Form Required?  YES NO			
Completion Date Federal Aid Number (If Applicable)		Project Title and Description of Work:				
Unified Business Identifier (UBI) Number						
Lump Sum Amount						
Management Reserve Fund Amount		DBE Participation YES No				
Maximum Amount Payable		WBE Participation (Voluntary) YES NO				
THIS AGREEMENT, made the Washington State Depart hereinafter called the "CON	and entered into this day of _ tment of Transportation and the Secretary SULTANT".	, 1999, between of Transportation, hereinafter called the	n the State of Washington, acting through he "STATE", and the above organization			
WITNESSETH THAT:						
WHEREAS, the STATE des	sires to accomplish the above referenced	PROJECT, and				
	es not have sufficient staff to meet the req .NT to provide the necessary services for		s it advisable and desirable to engage the			
	ANT represents that he/she is in compliant a willingness to furnish Consulting serve		es relating to professional registration, if			
NOW THEREFORE, in con a part hereof, the parties her	sideration of the terms, conditions, coven eto agree as follows:		n, or attached and incorporated and made			
	MENT shall consist of the above described the CONSULTANT shall furnish all service					
· ·		II ope of Work				
The Scope of Work and proj of this AGREEMENT.	Sec jected level of effort required for this proj	ect is detailed in Exhibit "B" attached	hereto, and by this reference made a part			

#### III General Requirements

All aspects of coordination of the work of this AGREEMENT, with outside agencies, groups or individuals shall receive advance approval by the STATE. Necessary contacts and meetings with agencies, groups or individuals shall be coordinated through the STATE. The CONSULT-ANT shall attend coordination, progress and presentation meetings with the STATE or such Federal, Community, City or County officials, groups or individuals as may be requested by the STATE. The STATE will provide the CONSULTANT sufficient notice prior to meetings requiring CONSULTANT participation. The minimum number of hours or days notice required shall be agreed to between the STATE and the CONSULT-ANT and shown in Exhibit "B" attached hereto and made part of this AGREEMENT. The CONSULTANT shall prepare a monthly progress report, in a form approved by the STATE, that will outline in written and graphical form the various phases and the order of performance of the work in sufficient detail so that the progress of the work can easily be evaluated. Goals for Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), and Women Business Enterprises (WBE) if required, shall be shown on the heading of this AGREEMENT. If D/M/WBE firms are utilized, the amounts authorized to each form and their certification number will be shown on Exhibit "E". All reports, PS&E materials and other data, furnished to the CONSULTANT by the STATE shall be returned. All designs, drawings, specifications, documents, and other work products prepared by the CONSULTANT prior to completion or termination of this AGREEMENT are instruments of service for this PROJECT and are property of the STATE. Reuse by the STATE or by others acting through on behalf of the STATE of any such instruments of service, not occurring as part of this PROJECT, shall be without liability or legal exposure to the CONSULTANT.

#### IV Time for Beginning and Completion

The CONSULTANT shall not begin any work under the terms of this AGREEMENT until authorized in writing by the STATE. All work under

this AGREEMENT shall be completed by the date shown in the heading of this AGREEMENT under completion date.

The established completion time shall not be extended because of any delays attributable to the CONSULTANT, but may be extended by the STATE, in the event of a delay attributable to the STATE, or because of unavoidable delays caused by an act of GOD or governmental actions or other conditions beyond the control of the CONSULTANT. A prior supplemental agreement issued by the STATE is required to extend the established completion time.

#### V Payment

The CONSULTANT shall be paid by the STATE for completed work and services rendered under this AGREEMENT as provided hereinafter. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section II, "Scope of Work". The CONSULTANT shall conform with all applicable portions of 48 CFR 31. The estimate in support of the lump sum amount is attached hereto as Exhibit "C" and hereby made part of this AGREEMENT.

- A. Lump Sum Agreement: Payment for all consulting services for this project shall be on the basis of a lump sum amount as shown in the heading of this AGREEMENT.
  - Management Reserve Fund: The STATE may desire to establish a Management Reserve Fund to provide the Agreement Administrator the flexibility of authorizing additional funds to the AGREEMENT for allowable unforeseen costs, or reimbursing the CONSULTANT for additional work beyond that already defined in this AGREEMENT. Such authorization(s) shall be in

serve Fund is shown in the heading of the AGREEMENT. This fund may be replenished in a subsequent supplemental agreement. Any changes requiring additional costs in excess of the "Management Reserve Fund" shall be made in accordance with Section XIV, "Extra Work".

- Maximum Total Amount Payable: The Maximum Total Amount Payable, by the STATE to the CONSULTANT under this AGREEMENT, shall not exceed the amount shown in the heading of this AGREEMENT. The Maximum Total Amount Payable is comprised of the Lump Sum Amount and the Management Reserve Fund. The Maximum Total Amount Payable does not include payment for extra work as stipulated in Section XIV. "Extra Work"
- 3. Monthly Progress Payments: Partial payments may be made upon request of the CONSULTANT to cover the percentage of work completed, and are not to be more frequent than one (1) per month. To provide a means of verifying the invoiced salary costs for the CONSULTANT's employees, the STATE may conduct employee interviews. These interviews may consist of recording the names, titles, salary rate and present duties of those employees performing work on the PROJECT at the time of the interview.
- C. Final Payment: Final payment of any balance due the CONSULT-ANT of the gross amount earned will be made promptly upon its verification by the STATE after the completion of the work under this AGREEMENT, contingent upon receipt of all PS&E, plans, maps, notes, reports and other related documents which are required to be furnished under this AGREEMENT. Acceptance of such final payment by the CONSULTANT shall constitute a release of all claims for payment which the CONSULTANT may have against the STATE unless such claims are specifically reserved in writing and transmitted to the STATE by the CONSULTANT prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item and that at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT agrees to refund such overpayment to the STATE within thirty (30) days of notice if any such payment. Such refund shall not constitute a waiver by the CONSULTANT for any claims relating to the validity of a finding by the STATE of overpayment. The CONSULTANT has twenty (20) days after receipt of the final POST AUDIT to begin the appeal process to the STATE for audit findings.

D. Inspection of Cost Records: The CONSULTANT and his/her sub-consultants shall keep available for inspection by representatives of the STATE and the United States, for a period of three (3) years after final payment, the cost records and accounts pertaining to this AGREEMENT and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the three year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

#### VI Subcontracting

The STATE permits subcontracts for those items of work as shown in Exhibit "D" to this AGREEMENT.

Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "D", attached hereto and by this reference made a part of this AGREEMENT.

The work of the subconsultants shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

#### VII

#### Employment

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

#### VIII

#### Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

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- A. Compliance With Regulations: The CONSULTANT shall comply with all Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. Solicitations for Subconsultants, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.
- D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - Withholding of payments to the CONSULTANT under the contact until the CONSULTANT complies, and/or
  - Cancellation, termination or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

Audit Guide for Consultants August 1999 Compensation for this subconsultant work shall be based on the cost factors shown on Exhibit "D", attached hereto and by this reference made a part of this AGREEMENT.

A. Compliance With Regulations: The CONSULTANT shall comply with all Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code

The work of the subconsultants shall not exceed its maximum amount payable unless a prior written approval has been issued by the STATE.

All reimbursable direct labor, overhead, direct non-salary costs and fixed fee costs for the subconsultant shall be substantiated in the same manner as outlined in Section V. All subcontracts exceeding \$10,000 in cost shall contain all applicable provisions of this AGREEMENT.

The CONSULTANT shall not subcontract for the performance of any work under this AGREEMENT without prior written permission of the STATE. No permission for subcontracting shall create, between the STATE and subcontractor, any contract or any other relationship.

#### VII

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The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warrant, the STATE shall have the right to annul this AGREEMENT without liability, or in its discretion, to deduct from the AGREEMENT price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

Any and all employees of the CONSULTANT or other persons while engaged in the performance of any work or services required of the CONSULTANT under this AGREEMENT, shall be considered employees of the CONSULTANT only and not of the STATE, and any and all claims that may or might arise under any Workmen's compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the CONSULTANT's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the CONSULTANT.

The CONSULTANT shall not engage, on a full or part time basis, or other basis, during the period of the contract, any professional or technical personnel who are, or have been, at any time during the period of the contract, in the employ of the United States Department of Transportation or the STATE, except regularly retired employees, without written consent of the public employer of such person.

#### VIII

#### Nondiscrimination

The CONSULTANT agrees not to discriminate against any client, employee or applicant for employment or for services because of race, creed, color, national origin, marital status, sex, age or handicap except for a bona fide occupational qualification with regard to, but not limited to the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or terminations, rates of pay or other forms of compensation, selection for training, rendition of services. The CONSULTANT understands and agrees that if it violates this provision, this AGREEMENT may be terminated by the STATE and further that the CONSULTANT shall be barred from performing any services for the STATE now or in the future unless a showing is made satisfactory to the STATE that discriminatory practices have terminated and that recurrence of such action is unlikely.

During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- A. Compliance With Regulations: The CONSULTANT shall comply with all Regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 Code of Federal Regulations (CFR) Part 21, 23 CFR 710.405(b) and Title VI of the civil Rights Act of 1964, as amended. The CONSULTANT shall comply with the American Disabilities Act of 1992, as amended.
- B. Nondiscrimination: The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed color, sex, age, marital status, national origin or handicap except for a bona fide occupational qualification in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix II of the Regulations.
- C. Solicitations for Subconsultants, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, creed, color, sex, age, marital status, national origin and handicap.
- D. Information and Reports: The CONSULTANT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the STATE, or the United States Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - 1. Withholding of payments to the CONSULTANT under the contact until the CONSULTANT complies, and/or
  - Cancellation, termination or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions: The CONSULTANT shall include the provisions of paragraphs (A) through (G) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subconsultant or procurement as the STATE or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the STATE to enter into such litigation to protect the interests of the STATE, and in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

G. Unfair Employment Practices: The CONSULTANT shall comply with RCW 49.60.180 and Executive Order number E.O 77-13 of the Governor of the State of Washington which prohibit unfair employment practices.

#### IX

#### Termination of Agreement

The right is reserved by the STATE to terminate this AGREEMENT at any time upon ten (10) days written notice to the CONSULTANT.

In the event this AGREEMENT is terminated by the STATE other than for default on the part of the CONSULTANT, a final payment shall be made to the CONSULTANT which, when added to any payments previously made, shall total the same percentage of the Lump Sum Amount as the work completed at the time of termination is to the total work required for the PROJECT. In addition, the CONSULTANT shall be paid for any authorized extra work completed.

No payment shall be made for any work completed after ten days following receipt by the CONSULTANT of the Notice to terminate. If the accumulated payment made to the CONSULTANT prior to Notice of Termination exceeds the total amount that would be due when computed as set forth herein above, then no final payment shall be due and the CONSULTANT shall immediately reimburse the STATE for any excess paid.

If the services of the CONSULTANT are terminated by the STATE for default on the part of the CONSULTANT, the above formula for payment shall not apply.

In such an event, the amount to be paid shall be determined by the STATE with consideration given to the actual costs incurred by the CONSULT-ANT in performing the work to the date of termination, the amount of work originally required which was satisfactorily completed to date of termination, whether that work is in a form or a type which is usable to the STATE at the time of termination; the cost to the STATE of employing another firm to complete the work required and the time which maybe required to do so, and other factors which affect the value to the STATE of the work performed at the time of termination. Under no circumstances shall payment made under this subsection exceed the amount which would have been made using the formula set forth in the previous paragraph.

If it is determined for any reason that the CONSULTANT was not in default or that the CONSULTANT's failure to perform is without the CONSULTANT's or it's employee's default or negligence, the termination shall be deemed to be a termination for the convenience of the STATE in accordance with the provision of this AGREEMENT.

In the event of the death of any member, partner or officer of the CONSULTANT or any of its supervisory personnel assigned to the project, or, dissolution of the partnership, termination of the corporation, or disaffiliation of the principally involved employee, the surviving members of the CONSULTANT hereby agree to complete the work under the terms of this AGREEMENT, if requested to do so by the STATE. The subsection shall not be a bar to renegotiation of the AGREEMENT between the surviving members of the CONSULTANT and the STATE, if the STATE so chooses.

In the event of the death of any of the parties listed in the previous paragraph, should the surviving members of the CONSULTANT, with the STATE's concurrence, desire to terminate this AGREEMENT, payment shall be made as set forth in the second paragraph of this section.

Payment for any part of the work by the STATE shall not constitute a waiver by the STATE of any remedies of any type it may have against the CONSULTANT for any breach of this AGREEMENT by the CONSULTANT, or for failure of the CONSULTANT to perform work required of it by the STATE. Forbearance of any rights under the AGREEMENT will

not constitute waiver of entitlement to exercise those rights with respect to any future act or omission by the CONSULTANT.

#### X Changes of Work

The CONSULTANT shall make such changes and revisions in the complete work of this AGREEMENT as necessary to correct errors appearing therein, when required to do so by the STATE, without additional compensation thereof. Should the STATE find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the CONSULTANT shall make such revisions as directed by the STATE. This work shall be considered as Extra Work and will be paid for as herein provided under Section XIV.

#### XI Disputes

Any dispute concerning questions of fact in connection with the work not disposed of by AGREEMENT between the CONSULTANT and the STATE shall be referred for determination to the Secretary of Transportation of the Washington State Department of Transportation, whose decision in the matter shall be final and binding on the parties of this AGREEMENT, provided however, that if an action is brought challenging the Secretary's decision, that decision shall be subject to de novo judicial review. If the parties to this AGREEMENT mutually agree, disputes concerning alleged design errors will be conducted under the procedures found in the Washington State Department of Transportation Consultant Service's Procedures Manual M27-50 and revisions thereto.

#### XII

#### Venue, Applicable Law and Personal Jurisdiction

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT, the parties hereto agree that any such action shall be initiated in the Superior court of the State of Washington, situated in Thurston County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decisions of the Superior court in accordance with the laws of the State of Washington. The CONSULTANT hereby consents to the personal jurisdiction of the Superior court of the State of Washington, situated in Thurston County.

#### XIII Legal Relations

The CONSULTANT shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this AGREE-MENT. This contract shall be interpreted and construed in accord with the laws of Washington.

The CONSULTANT shall indemnify and hold the STATE and its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the CONSULTANT's negligence or breach of any of its obligations under this AGREEMENT; provided that nothing herein shall require a CONSULTANT to indemnify the STATE against and hold harmless the STATE from claims, demands or suits based solely upon the conduct of the STATE, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the CONSULTANT's agents or employees and (b) the STATE, its agents, officers and employees, this indemnity provision with respect to (1) claims or suits based upon such negligence (2) the costs to the STATE of defending such claims and suits shall be valid and enforceable only to the extent of the CONSULTANT's negligence or the negligence of the CONSULTANT's agents or employees.

The CONSULTANT's relation to the STATE shall be at all times as an independent contractor.

The CONSULTANT specifically assumes potential liability for actions brought by the CONSULTANT's own employees against the STATE and, solely for the purpose of this indemnification and defense, the CONSULTANT specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

Unless otherwise specified in the AGREEMENT, the STATE shall be responsible for administration of construction contracts, if any, on the project. Subject to the processing of an acceptable, supplemental agreement, the CONSULTANT shall provide on-call assistance to the STATE during contract administration. By providing such assistance, the CONSULTANT shall assume no responsibility for: proper construction techniques, job site safety, or any construction contractor's failure to perform its work in accordance with the contract documents.

The CONSULTANT shall obtain and keep in force during the terms of the C. AGREEMENT, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

#### Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the STATE.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall not exceed one million dollars (\$1,000,000).
- Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit.
   (Applicable only if CONSULTANT is using WSDOT vehicle.)

Excepting the Worker's Compensation Insurance and any Professional Liability Insurance secured by the CONSULTANT, the State of Washington, Department of Transportation shall be named on all policies as an additional insurance. The CONSULTANT shall furnish the STATE with verification of insurance and endorsements required by the AGREE-MENT. The STATE reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The CONSULTANT shall submit a verification of insurance as outlined above within fourteen (14) days of the execution of this AGREEMENT to:

Consultant Administrator Washington State Department of Transportation Transportation Building P.O. Box 47323 Olympia, WA 98504-7323

No cancellation of the foregoing policies shall be effective without thirty (30) days prior notice to the STATE Consultant Service's Office.

The CONSULTANT's professional liability to the STATE shall be limited to the amount payable under this AGREEMENT or one million (\$1,000,000) dollars, whichever is the greater. In no case shall the CONSULTANT's professional liability to third parties be limited in any way.

The STATE will pay no progress payments under Section V until the CONSULTANT has fully complied with this section. This remedy is not exclusive; and the STATE may take such other action as is available to it under other provisions of this AGREEMENT, or otherwise in law.

#### XIV

#### Extra Work

- A. The STATE may at any time, by written order, make changes within the general scope of the AGREEMENT in the services to be performed.
- B. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this AGREEMENT, whether or not changed by the order, or otherwise affects any other terms and conditions of the AGREEMENT, the STATE shall make an equitable adjustment in the (1) maximum amount payable; (2) delivery or completion schedule, or both; and (3) other affected terms and shall modify the AGREEMENT accordingly.
- C. The CONSULTANT must submit its "request for equitable adjustment" (hereafter referred to as claim) under this clause within thirty (30) days from the date of receipt of the written order. However, if the STATE decides that the facts justify it, the STATE may receive and act upon a claim submitted before final payment of the AGREEMENT.
- D. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However nothing in this clause shall excuse the CONSULTANT from proceeding with the AGREEMENT as changed.
- E. Notwithstanding the terms and condition of paragraphs (a) and (b) above, the maximum amount payable for this AGREEMENT, shall not be increased or considered to be increased except by specific written supplement to this AGREEMENT.

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#### **Endorsement of Plans**

The CONSULTANT shall place his endorsement on all plans, estimates or any other engineering data furnished by him.

#### XVI Federal Review

The Federal Highway Administration shall have the right to participate in the review or examination of the work in progress.

#### XVII

#### Certification of the Consultant and the State

Attached hereto as Exhibit "A-1", are the Certifications of the CONSULTANT and the STATE, Exhibit "A-2" Certification regarding debarment, suspension and other responsibility matters - primary covered transactions, Exhibit "A-3" Certification regarding the restrictions of the use of Federal funds for lobbying and Exhibit "A-4" Certificate of Current Cost or Pricing Data. Exhibits "A-3" and "A-4" are only required in AGREEMENTS over \$100,000.

#### XVIII

#### Complete Agreement

This document and referenced attachments contains all covenants, stipulations and provisions agreed upon by the parties. No agent, or representative of either party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as an amendment to this AGREE-MENT.

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effect. The CONSULTANT does hereby ratify an	XIX Execution and Acceptance ed in several counterparts, each of which shall be deemed to be an original having identical legal d adopt all statements, representations, warranties, covenants, and agreements contained in the
	by the CONSULTANT, and does hereby accept the AGREEMENT and agrees to all of the terms
In witness whereof, the parties hereto have execute	d this AGREEMENT as of the day and year first above written.
	WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
Ву	Ву
	Assistant Secretary for the
	Assistant Secretary for the Environmental and Engineering Service Center
Any modification, change or reformation of this AC	Assistant Secretary for the Environmental and Engineering Service Center  Environmental and Engineering Service Center  GREEMENT shall require approval as to form by the Office of the Attorney General.
Any modification, change or reformation of this AC	Environmental and Engineering Service Center
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Any modification, change or reformation of this AG	Environmental and Engineering Service Center
Any modification, change or reformation of this AC	Environmental and Engineering Service Center
Any modification, change or reformation of this AC	Environmental and Engineering Service Center
Any modification, change or reformation of this Ad	Environmental and Engineering Service Center

# Chapter 18 Conflict of Interest — Who Me?

#### Chapter 18

The following is being provided for information purposes only. In part, it is the opinion of the Audit Office, i.e., it is not based upon legal counsel. Therefore, the reader should come to their own conclusions.

In rare cases, auditors do observe situations which approach a conflict of interest between the consultant community and WSDOT.

The reader needs to be aware of this potential for conflict of interest and the implications which may result from such activity.

#### **Basic Definition**

Webster's New World Dictionary, Second College edition, defines conflict of interest as "a conflict between one's obligation to the public good and one's self-interest, as in the case of a public officeholder who owns stock in a company seeking government contracts."

48 CFR 3.101-1 discusses standards of conduct. "Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of conflict of interest in Government-contractor relationships." Part 3.101-2 states "As a rule, no Government employee may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who (a) has or is seeking to obtain Government business with the employee's agency, (b) conducts activities that are regulated by the employee's agency, or (c) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties."

In 1994, the Washington State Legislature passed a new state ethics law that applies to all state employees and officers.

The basic guiding principle is that a state officer or employee may not use his or her public position for private benefit or gain. This basic guiding principle is reflected in the following summary of four general provisions of the ethics law.

- 1. A state officer or employee may not have a financial or other interest, or engage in any business or professional activity that is in conflict with his or her official duties. ESSB 6111, Paragraph 102.
- 2. A state officer or employee may not use his or her official position to secure special privileges for himself or herself or any other person. ESSB 6111, Paragraph 107.

- 3. A state officer or employee may not receive any compensation or gift from a source, except the state, for performing or deferring the performance of any official duty. There is no minimum value for a gift. ESSB 6111, Paragraph 111.
- 4. A state officer or employee may not receive a gift or favor, if it could be reasonably expected to influence or reward his or her vote, judgment, action, or inaction. There is no minimum value for a gift. ESSB 6111, Paragraph 114.

#### **Arm's Length Transactions**

Consultants need to be aware of WSDOT policies that may restrict the eligibility of former WSDOT employees, hired by the consultant, from working in an official capacity and dealing with the department. The Audit Office recommends that if the consultants have any concerns regarding this area, they should contact the WSDOT Audit Office located in the WSDOT Olympia Service Center building in Olympia.

Be aware of the following:

Private firms should not attempt to entertain WSDOT employees. This includes buying their lunches and/or dinners. Likewise, WSDOT employees should not accept any form of gratuity including paid lunches and/or dinners from any private firm doing business with or having a potential of doing business with WSDOT. WSDOT does not consider paying a consultant with federal and state tax dollars to entertain WSDOT employees to be a legitimate business expense.

These types of costs should not be included in the overhead calculations, and they should never be billed as direct nonsalary costs to a WSDOT agreement. The bottom line is that if there is any question as to whether or not something is a conflict of interest, do not do it!

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### Chapter 19

## Sole Proprietorships — Wage and Billing Rates

## Sole Proprietorships — Wage and Billing Rates

#### Chapter 19

This chapter address the following areas:

- Establishing the sole proprietor's billing rate.
- Establishing the overhead rate for a sole proprietorship.
- Establishing all-inclusive hourly rates for sole proprietorship firms.

A sole proprietorship is a company owned solely by one person. For tax purposes, the company's net profits become the owner's taxable income, and the net losses become the owner's net loss for tax purposes.

For WSDOT purposes, there are several ways to look at calculating gross wages, hourly pay rates, and billing rates.

#### Sole Proprietor's Billing Rate

As discussed in Chapter 20, the sole proprietor typically has a billing rate for services which is based on the going market rate for like services elsewhere. In reality, the owner of the firm takes draws against the profits of the firm. This results in a pay structure from month to month which can vary depending upon the firm's business, and the owner's need for cash.

Historically at WSDOT, the salary rate or billing rate for a sole proprietor has been negotiated on a case by case basis since the individual has no established salary.

#### **Overhead Rate**

The sole proprietor may or may not have employees. In developing a firm's overhead rate, we then have two scenarios to work with.

#### **Sole Proprietorships With No Employees**

The auditors will want to know the exact number of hours the owner has worked directly on projects and indirectly on administrative matters. These hours, supported by time sheets, will ultimately play a role in development of the firm's overhead rate.

Next, just as with any other firm, the indirect costs of the firm will be identified and verified by audit. An overhead rate will be calculated by dividing total allowable indirect costs by total direct labor. This is used for possible negotiation purposes.

This type of information is provided to management during a preaward audit, and the agreement for services negotiated accordingly.

The problem for the sole proprietor, or WSDOT manager, is that at the time of a post audit, if no preaward audit has been conducted, billed costs are usually questioned. This for the simple fact that the billed costs may not reflect actual costs or negotiated rates.

Direct nonsalary costs, and other associated costs which may be billed for services provided, must follow the basic guidelines indicated in Chapters 6 and 7.

#### **Sole Proprietorships With Employees**

In this scenario we have the same situation as described above in determining the owner's labor costs. The employees are normally paid an established salary.

This method uses a computed labor rate for the owner, identifying direct and indirect costs. The direct cost is then added to the direct labor base of the employees, with the computed indirect labor included in the indirect overhead labor value. Dependent upon the draws (salary) taken by the owner, this method should approximate an actual overhead rate for the firm.

In this scenario the key words are computed rates, or values, i.e., we are not talking about actual costs, in the sense of those associated with other type of firms, i.e., their direct labor and overhead costs.

#### **Establishing the Sole Proprietorship All-Inclusive Hourly Rate**

Typically, the billing rate for sole proprietorships has been negotiated due to the difficulty in establishing the owner's labor rate, and in establishing an overhead rate that is reasonable.

The method of payment for each type of agreement is up to the WSDOT contracting officer or consultant liaison working with the firm, and may vary from agreement to agreement.

The major problem with both of these scenarios is determining the proprietor's wage rate to be used in calculating the direct labor base. We expect that every sole proprietor would have set an expected, but reasonable, wage rate. Whether this rate is attained or not depends upon the profitability of the firm. Care must be taken to ensure that wage rates charged to WSDOT are not inflated to make up for losses on other agreements.

Factors to consider when determining a sole proprietor's wage rate include:

- 1. Total direct labor hours and total indirect labor hours.
- 2. Total annual amount of draws.
- 3. Proprietor's taxable income.
- 4. Proprietor's billing rate.
- 5. Proprietor's budgeted wage rate.

The decision as to what the sole proprietor's wage rate actually is will be made on the auditor's best judgment with the data available. Ideally, the proprietor will have time records identifying direct and indirect labor hours and draws will be approximately equal to a reasonable and expected wage rate.

#### **Summary**

In the end, the salary billing rate, overhead rate, and fixed fee for a sole proprietor or partners in a partnership may have to be negotiated with the WSDOT contracting officer.

Information developed during a preaward audit, or after the fact, during a post audit, at best may approximate what the actual costs are or should be for performing the work.

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### Chapter 20

## Billing Rates — Sole Proprietor and Partnerships

## Billing Rates — Sole Proprietor, Partnerships

#### Chapter 20

#### General

For most firms, billing rates are usually pre-established and published hourly rates charged to most of their clients. Sometimes these rates vary depending upon the type of work to be performed or are based on "the going rate" or on what "the market will bear."

When preparing cost proposals for WSDOT, the firm's billing rates must be calculated in a different way.

Billing rates accepted by WSDOT are made up of three components.

#### Hourly Pay Rate

First is the individual employee's hourly pay rate. This rate usually will be the same rate as shown on the employee's payroll records and in his/her personnel file. The WSDOT auditor will review the company's payroll and personnel records to verify the employee's actual pay rate.

#### Application of an Overhead Rate

Second is the application of an overhead rate. The WSDOT auditor will calculate the accepted overhead rate based upon the firm's stated overhead rate as adjusted to comply with 48 CFR 31, WSDOT Cost Principles, and WSDOT Travel Directive D 13-50. This rate is calculated by dividing the adjusted overhead costs by the adjusted direct labor. (To accomplish this, the auditor will need to review, for the audit period, the firm's time sheets, monthly and/or quarterly and/or annual time and payroll summaries, vendor files, tax records, general ledger, trial balance, income statement, and balance sheet.)

#### Fixed Fee

Third is the profit rate or fixed fee to be allowed. This is determined in one of two ways. A profit percentage can be applied to the direct labor rate. This is a negotiated rate between the firm and the negotiating officer. The rate usually ranges between 17 and 35 percent of direct labor depending upon the size, difficulty, and complexity of the agreement, the extent of supervising subconsultants, etc.

The other method is to negotiate a fixed dollar amount for profit. A percentage of the profit amount is then billed each month to equal the percentage of the job completed.

#### Billing Rate

All three of the above factors are then added together to arrive at an individual's billing rate. This rate is then applied to every hour which that employee works on the WSDOT project.

Some agreements may not list individual employees' billing rates, but instead may list billing rates by classes of employees such as principals, senior engineers, engineers, drafters, etc. In this case, billing must still be based on actual payroll rates for each employee. WSDOT does not allow the use of average rates.

Some employees may actually earn less than the agreed upon rate, while others may earn more. For this type of agreement, it will be necessary for the WSDOT auditor to verify that the employees being billed in a specific class are actually classified as such and are being paid accordingly.

#### Rate Adjustment

Proposed, projected, and approved billing rates may be adjusted, depending upon the language of the agreement.

#### Part-Time Employees

Part-time employees who do not receive all of the firm's fringe benefits should be using a lower billing rate than the full-time employees as the overhead costs associated with them are less than with the full-time employees. If the firm has a 30 percent benefit package and an accepted overhead rate of 150 percent, then a part-time employee who receives no benefits should be using an overhead rate of 120 percent when calculating his/her billing rate. The profit rate remains the same.

#### Contract Labor (Employees)

Hours for independent contractors and contract employees (those hired through an employment agency or independently), are not to be included with the firm's employees when invoicing WSDOT. These workers should be billed to WSDOT at the actual cost to the firm (with no markup) under the direct nonsalary costs section of the invoice. Also, payments to independent contractors and contract employees are to be excluded from the direct labor base used in calculating the firm's overhead rate.

#### Sole Proprietors' and Partnership's Wage Rates and Billing Rates

A sole proprietorship is a company owned by one person. For tax purposes, the company's net profits become the proprietor's or partner's taxable income, and the company's net losses become the proprietor's net loss for tax purposes.

For WSDOT purposes, there are several ways to look at calculating gross wages, hourly pay rates, and billing rates.

#### **Gross Wages**

Gross wages should at least be equal to the net income shown on the individual's tax return. But other items may have to be added to the net income or draws when calculating the individual's gross wages for WSDOT purposes. Auto allowance, insurance premiums, retirement plans, savings accounts, investments, meals, and other similar expenses are some examples. Where larger companies include some of these as employee benefits in the overhead, a sole proprietorship or partnership may have to include them in their gross wages.

Auto allowance is taxable to the individual to the extent that receipts are greater than expenses incurred. The amount allowable for overhead is the amount attributable to the business, either actual or percentage wise. Properly documented mileage reimbursements are not taxable, but are totally included in overhead.

Insurance and retirement plans are legitimate business expenses provided that they are not excessive in amount and the business is not the beneficiary.

Savings and investment accounts are taxable income to the individual for the amounts deposited during the current year plus the interest earned during the year.

Meal expenses are business expenses only to the extent that they are truly business related. Everyday breakfast, lunch and/or dinner costs are not business related and should be taken out of overhead and added to the individual's income.

In summary, gross wages for a sole proprietor should include all income taken plus the value of any expenses which directly benefit the owner over and above the normal business amount.

#### Hourly Rates

Sole proprietors usually bill a predetermined hourly rate. This rate is usually as high as the owner feels is reasonable or all that competition will allow based on competitive pricing.

For small businesses, competition and seasonal workloads are crucial to their survival. Their rates may generally go up and down depending on the workload at the time they are bidding a job. If they have little or no work, they will usually lower their rates to a point that will cover their costs but allow nothing for salary or profit.

One method of calculating an hourly rate for the labor distribution of the sole proprietor is to take their gross wages and divide them by the actual number of direct and indirect hours worked to arrive at an hourly rate. Then multiply the hourly rate times the direct and indirect hours to get the direct and indirect labor.

A different method is to take the total dollars billed and divide by the billed hours. This hourly rate times the number of hours billed will equal the direct labor costs. The owner's gross wages minus the direct labor leaves the amount to go into indirect labor.

We may calculate the hourly rate as above, multiply the direct hours times the hourly rate to get the direct labor and multiply the indirect hours times the rate to get the indirect labor. All gross wages over the calculated direct and indirect labor are dropped from the labor base calculations entirely.

If the agreement is to be a cost plus agreement, then the billing rate would be the same as the hourly rate as calculated above. If the agreement is to be all-inclusive hourly rate, then the firm's overhead rate will need to be calculated, as discussed above, and, along with the negotiated profit rate, added to the hourly rate as calculated above. This becomes the sole proprietor's or partner's billing rate.

As you can see, there are many variables to be considered when calculating the worth of an owner to the business entity. Here, we have presented some of them for your consideration. Since there are no existing guidelines as to how we will treat sole proprietors and partnerships, we will make no recommendations, but allow management to decide how they will be treated for WSDOT overhead calculations.

The reader is directed to Chapter 19, which discusses the development of the sole proprietorships billing or salary rate, including the firm's overhead rate.

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## Chapter 21 Field Office Overhead Rates

#### Chapter 21

#### Field Office Overhead Rates

A field office situation exists when a consultant's employees are performing services on a continuous basis for WSDOT and are working in a WSDOT owned facility or company owned office, independent of a local branch or central office.

Since the consultant employees are not working out of their own offices and are not receiving office support in their day to day activities, the hours billed for them do not qualify for the consultants full overhead rate. They do receive an overhead rate that is reduced for the support they receive from WSDOT.

The purpose of the field rate is to pay the consultant for the fringe benefits and home office support they do provide to their field employees. Usually, the field rate includes full fringe benefits plus a minimum amount for home office support.

The WSDOT Audit Office methodology used for establishing field office overhead rates is as follows:

ABC, Inc. Overhead Schedule December 31, 1997

								Allocation
	Reported		Audit	Audited		_	Home	Field
	Balance	Ref.	Adjust.	Balance	%	Ref.	Overhead	Overhead
Direct Labor Base	\$714,300	(C)	(\$ 100)	\$714,200			\$671,800	\$42,400
Overhead Costs								
B&P Costs	\$ 82,500			\$ 82,500	11.55%	(B)	\$ 80,570	1,931
Indirect Labor	436,700			436,700	61.15	(A)	410,760	25,940
Fringe Benefits	364,100			364,100	50.98	(A)	342,472	21,628
Conferences/Seminars	16,000			16,000	2.24	(B)	15,626	374
Indirect Travel	10,900			10,900	1.53	(B)	10,645	255
Office Supplies	49,100			49,100	6.87	(B)	47,951	1,149
Postage/Freight	9,700			9,700	1.36	(B)	9,473	227
Business Taxes	52,000			52,000	7.28	(A)	48,911	3,089
Legal & Accounting	21,000			21,000	2.94	(B)	20,509	491
Profess. Dues & Licenses	9,400			9,400	1.32	(B)	9,180	220
Insurance	13,700			13,700	1.92	(A)	12,886	814
Depreciation	27,400	(D)	(\$1,800)	25,600	3.58	(B)	25,001	599
Legal & Accounting	18,700			18,700	2.62	(A)	17,589	1,111
Recruit/Emp. Morale	8,300	(E,F,G)	(2,100)	6,200	0.87	(B)	6,055	145
Rent	124,900			124,900	17.49	(B)	121,977	2,923
Utilities	16,400			16,400	2.30	(B)	16,016	384
Maintenance/Repairs	12,700			12,700	1.78	(B)	12,403	297
Leased Equipment	79,900	(H)	(3,900)	76,000	10.64	(B)	74,222	1,778
Telephone	36,800			36,800	5.15	(B)	35,939	861
Less: Cost Allocations	(437,500)			-437,500	-61.26	(B)	(427,263)	(10,238)
<b>Total Overhead Costs</b>	\$952,700		<u>(\$7,800)</u>	\$944,900	132.30%	(B)	\$890,922	\$53,978
Overhead Bata	100.000/			100.000/			100.000/	107.010/
Overhead Rate	<u>133.38</u> %			<u>132.30</u> %			<u>132.62</u> %	<u>127.31</u> %

#### References

- (A) Allocates field and home office overhead rates in the same proportion as labor.
- (B) Allocates space costs associated with support labor.
- (C) Overtime premium unallowable per 48 CFR 22.103-2.
- (D) Adjust depreciation to agree with tax return 48 CFR 31.205-11(d)(3).
- (E) Local meals unallowable per 48 CFR 31.205-14 and WSDOT Travel Directive D 13-50.
- (F) Donations unallowable per 48 CFR 31.205-8.
- (G) Advertising unallowable per 48 CFR 31.205-1(d).
- (H) Direct project costs unallowable in overhead per 48 CFR 31.202(a).

#### **Computation of Field Allocation Rates**

Allocation A

<u>Direct Field Labor</u> = <u>\$42,400.00</u> = 5.94%

Total Direct Labor \$714,200.00

This allocation does not have an affect on the field or home office overhead rates. It was applied to all accounts, the field home office rate would be the same.

This percentage should be applied to expenses common to both field and home office direct labor in equal proportions, i.e., indirect salaries, payroll taxes, group insurance, paid leaves, bonuses, legal, and accounting, etc.

Allocation B

 $\frac{\text{Allocated Support Services (Indirect Salaries x Allocation A)}}{\text{Home Office Direct Labor + Indirect Salaries}} = \frac{\$436,670.00 \times 5.94\%}{\$671,800.00 + \$436,670.00} = 2.34\%$ 

This rate allocates to the field the "space costs" associated with supportive service labor.

This rate should be applied to rent, supplies, utilities, etc.

Data used in the above calculations:

Direct Field Office Labor
Direct Home Office Labor
Total Direct Labor
\$42,400
\$671,800
\$714,200

Indirect Labor \$436,700

#### **Computation of Field Allocation Rates**

#### Allocation A

<u>Direct Field Labor</u> = Total Direct Labor

This allocation does not have an effect on the field or home office overhead rates. If it was applied to all accounts, the field and home office rates would be the same.

This percentage should be applied to expenses common to both field and home office direct labor in equal proportions, i.e., Indirect Salaries, Payroll Taxes, Group Insurance, Paid Leaves, Bonuses, Legal, Accounting, Personnel, etc.

#### Allocation B

#### Allocated Supportive Service (Indirect Salaries x Alloc. A)

Home Office Direct Labor + Indirect Salaries

This rate allocates to the field the "space costs" associated with supportive service labor. This rate should be applied to Rent, Supplies, Utilities, etc.

Data used in calculations:	
Direct Field Office Labor Direct Home Office Labor Total Direct Labor	
Indirect Salaries-Admin. Indirect Salaries-Office Total Indirect Salaries	

The field rate is based upon an application of two different allocation rates to the consultants overhead cost categories.

The first allocation uses the relationship of direct field labor to total direct labor, described below:

The second allocation uses the relationship of indirect salaries and the allocation described above, to home office direct labor and indirect salaries, as described below:

Once these two calculations are made, the allocations are applied to the various line item accounts identified in a firm's overhead schedule. The end result is a value, wrong, right, or indifferent, which is used for payment purposes.

#### **Summary**

The primary reason for using a standard methodology, is to approximate the costs and associated level of effort a field office operation might receive from the home or corporate office. And in doing so, be consistent in how WSDOT Audit treats each individual field office situation, to the extent possible.

The underlying theory is that a field office for the most part is self-sufficient. The firm or firms were hired because of their given expertise. Their mission is such that little if any input is probably required from the home operation. Therefore, the associated costs should be minimal for the operation to exist.

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# Chapter 22 Advance Agreement on Costs

#### Chapter 22

#### Advance Agreement on Costs

During contract negotiations, certain cost items incurred by the consultant or proposed to be billed to WSDOT may be discussed.

The general rule is that many types of costs may be acceptable, subject to restrictions identified in 48 CFR. If an item of cost has been identified as expressly unallowable or ineligible for reimbursement, then under no conditions is the contracting officer allowed or authorized to approve billing or payment for that type of cost.

The firm and WSDOT need to consider long-term ramifications of allowing selected items of cost such as allowance for vehicles.

When proposed costs which appear to be unique come up, we recommend that the Audit Office be involved in the discussion prior to any advance agreement on the allowability of the cost item.

26:P65:DP/AG

## Chapter 23 Resolution Procedures

# Chapter 23

# Resolution Procedures

#### **Audit Resolution**

The audit resolution process begins when an audit report is issued by the Audit Office. The Audit Resolution Section reviews the report, makes contact with the auditee to gather more information, if necessary, on any findings, and determines the merits of the report. If there are findings, reviews are completed with the consultant, the department's contracting officer, and if required, FHWA, in order to determine the final resolution of the findings. Billings and/or reimbursements are made to the consultant based on the revised audit report and/or administrative settlement. The Audit Resolution Section reviews all appeals and coordinates the collection of moneys due the department.

Audit resolution is not done by the WSDOT Audit Office. The Audit Resolution Section is part of the Design Office which is part of the Envrionmental and Engineering Service Center.

27:P65:DP/AG

# Chapter 24 Examples of Forms

# Chapter 24

# Examples of Forms

Examples of forms commonly used by organizations:

- Time Sheets
- Travel Voucher
- Mileage Log
- Copy Log
- Computer Time Log (to be added at a later date)

28:P65:DP/AG

## Weekly or Semi-Monthly Time Sheet Total Hours Sch. Shift Start | Shift End Shift Information 31 15 30 14 13 Work Schedule 12 11 26 9 10 24 25 Days Employee Name (Last, First, MI.) 23 22 Distribution - Timekeeper, Approving Authority / Personnel, Employee 6 21 Supervisor's Signature 5 19 က 18 2 16 Total Hours Reported Above Sub Total Reported Above Service Request Date (Mo/Dy/Yr) Charge To Cross Org. Code Washington State Department of Transportation Control Section or Work Units Equip. Worked On or Non Part. **Labor Distribution Account Numbers** Soc. Sec. Number Complete with Blue or Black Ink Only Work Operation Standby Holiday Shift Employee's Signature Other Hours Job Number Work Order Group Org. Code □ SHFT □ STBY □ HOLY

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# Chapter 25 Audit Criteria

Chapter 25 Audit Criteria

WSDOT audits are conducted in accordance with the generally accepted government auditing standards established by the United States General Accounting Office.

The primary audit criteria used by the WSDOT Audit Office for the audit of consultant agreements is the Federal Acquisition Regulations System 48 Code of Federal Regulations. The secondary audit criteria is the 1994 WSDOT Overhead Policy as issued by the WSDOT Consultant Services Office. In addition, audit criteria is established in the written agreement between WSDOT and the consultant.

The agreement may limit or restrict the billing of certain costs, for example travel and per diem, or the way that a consultant bills labor costs, i.e., no overtime premium on labor costs is allowed.

Chapter 26 includes 48 CFR Part 31 Contracts with Commercial Organizations. This is the primary source of audit criteria pertaining to costs. As stated elsewhere in this guide, the Audit Office does use other parts of 48 CFR to provide guidance in dealing with selected audit issues.

We recommend the reader do at least the following:

• Become familiar with the contents of Part 31 of 48 CFR and read the complete text of the agreement your firms signs with WSDOT.

# 1992 WSDOT Bonus Policy

The effective date of the 1992 WSDOT Bonus Policy remains April 1, 1992.

All new cost plus fixed fee, hourly billing rate, or lump sum agreements that were signed after April 1, 1992, will use the bonus policy. It will be applied to the consultant's most current completed fiscal year, or the consultant's projected current fiscal year, to determine an overhead rate that will be used for billing purposes.

Any cost plus fixed fee, hourly billing rate, or lump sum supplement that is signed after April 1, 1992, will be subject to the same application of the bonus policy as a new agreement that is signed after April 1, 1992.

WSDOT has a bonus policy which allows firms to obtain reimbursement of bonus costs in accordance with the rules established by the Federal Acquisition Regulations (FAR) 48 CFR 31.205-6.

## Participation in Costs

WSDOT uses the FARs as a primary guidance for cost rules and procedures. The following subparts of 48 CFR 31.205-6 address to some extent employee compensation, which includes bonuses. The reader should become familiar with the other subsections of 31.205-6.

31.205-6 Compensation for personal services.

#### (a) GENERAL Compensation

- (1) "Compensation for personal services must be for work performed by the employee in the current year and must not represent a retroactive adjustment of prior years' salaries or wages..."
- (2) "The compensation in total must be reasonable for the work performed; however, specific restrictions on individual compensation elements must be observed where they are prescribed."
- (3) "The compensation in total must be based upon and conform to the terms and conditions of the contractor's established compensation plan or practice followed so consistently as to imply, in effect, and agreement to make the payment."
- (4) "No presumption of allowability will exist where the contractor introduces major revisions of existing compensation plans or new plans and the contractor
  - (i) Has not notified the cognizant ACO of the changes either before their implementation or within a reasonable period after their implementation, and
  - (ii) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the allowability of the changes."
- (5) "Costs that are unallowable under other paragraphs of this subpart 31.2 shall not be allowable under this subsection 31.205-6 solely on the basis that they constitute compensation for personal services."
- (b) "Reasonableness. The compensation for personal services paid or accrued to each employee must be reasonable for the work performed. Compensation will be considered reasonable if "each" of the allowable elements making up the employee's compensation package is reasonable. . . In determining the reasonableness of individual elements for particular employees or job classes of employees, consideration should be given to all potentially relevant facts. Facts which may be relevant include general conformity with the compensation practices of other firms of the same size, the compensation practices of other firms in the same industry, the compensation practices of other firms in the same geographic area, the compensation practices of firms engaged in predominantly nongovernment work, and the cost of comparable services obtainable from outside sources."

Reasonableness, as defined by WSDOT for bonuses, limits total bonus compensation to 15 percent of FARs allowable overhead costs as shown in the following examples:

# Example 1

Direct Labor Base OH Pool, Excluding Bonus Actual Bonus Paid, not in OH Pool Amount	\$ \$ \$	100,000 120,000 30,000
B=Allowable Bonus Amount		
B=.15[(Overhead Pool 120,000) + Allow. Bonus] B=18,000+.15B B15B=18,000 .85B=18,000 B=\$21,176		
Actual Bonus Paid Allowable Bonus Adjustment to Bonus	\$ \$	30,000 21,176 (8,824)
Overhead Pool, Excluding Bonus Allowable Bonus Total Allowable OH	\$ \$	120,000 21,176 141,176
Overhead Rate	14	41.18%
Allowable Bonus Total Allowable OH	\$ \$	21,176 * 141,176

<sup>\*15</sup> percent of Total Allowable OH.

## Example 2

Direct Labor Base OH Pool, Excluding Bonus Actual Bonus Paid, not in OH Pool Amount		500,000 700,000 100,000
B=Allowable Bonus Amount		
B=.15[(Overhead Pool 700,000) + Allow. Bonus] B=105,000+.15B B15B=105,000 .85B=105,000 B=\$123,527		
Potential Allowable Bonus Actual Bonus Paid	\$	123,527 100,000
Adjustment to Bonus	\$	0 *
Overhead Pool, Excluding Bonus Allowable Bonus Total Allowable OH		700,000 100,000 800,000
Overhead Rate	1	60.00%
Allowable Bonus	\$	100,000 **

Total Allowable OH

\$ 800,000

<sup>\*</sup>If actual bonus < potential allowable bonus, the actual bonus amount is accepted. \*\*12.5 percent of Total Allowable OH.

## Example 3

Direct Labor Base	\$1,000,000
OH Pool, Excluding Bonus	\$1,500,000
Actual Bonus Paid, not in OH Pool Amount	\$ 300,000

#### B=Allowable Bonus Amount

 $B=.15[(Overhead\ Pool\ 1,500,000) + Allow.\ Bonus]$ 

B=225,000+.15B B-.15B=225,000 .85B=225,000 B=\$264,706

Actual Bonus Paid \$ 300,000 Allowable Bonus 264,706 Adjustment to Bonus \$ (35,294)

Overhead Pool, Excluding Bonus\$1,500,000Allowable Bonus264,706Total Allowable OH\$1,764,706

Overhead Rate 176.47%

Allowable Bonus \$ 264,706 \* Total Allowable OH \$1,764,706

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<sup>\*15</sup> percent of Total Allowable OH.

# Chapter 26

# FARs Subpart 31 — Contract Cost Principles and Procedures

# Chapter 26

# FARs Subpart 31 — Contract Cost Principles and Procedures

We have included the following excerpt from FARs 48 CFR 31 — Contract Cost Principles and Procedures.

This part is the primary WSDOT source for determining the allowability, allocability, and reasonableness of costs billed by the consultant.

As with any laws, rules, and regulations, they are subject to change at any given time. Please contact the Audit Office, External Audit Branch, in Olympia, if you have any questions regarding this subpart.

We highly recommend that a firm purchase a set of 48 CFRs from their local federal government book store or get it from the Internet.

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## FAC 97-02 OCTOBER 10, 1997

### PART 31-CONTRACT COST PRINCIPLES AND PROCEDURES

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#### FEDERAL ADQUISITION REGULATION

31.005

(h) The determination, regulation or allowater of 1993, when reclared by a contract clause.

#### 31.MM Deficions.

"Accrued benefit out method" means an actuarial cost method under which enus of benefit are assigned to each cost according period and are valued as they accrue: (e., beselves the previous performed by each employée in the period involved. The measure of risk mail cost order this method to each each energy period is the prevent sales of the write of period deemed to be unabled to employees for service of that period. The measure of the actuals fliability at a plan's indepution date, is the present value of the units of benefit and read in imployees too service prior to that these. (This method as also known as the unit medit cost method.)

"Accumulating costs" means instituting cost data in an arganized training week as treating a system of accounts

"Actual cash value" means the cost of replacing damaged property with other property of like book and quality in the possess, condition of the property immediately before the damage.

machinal costs." as ested in this part fother 0.00 0.00,000, 31.6), means amounts determined on the basis of costs incurred, as distinguished from torecasted costs. Action reversitedude standard costs properly adjusted for applicable variances.

"Acceptual assumption" monks a prediction of future conditions affecting pension costs: e.g. montality rate, employee compose, compensation levels, pension fined our ings, and changes in values of provious lands assets.

"Acquaryl (pot method" means a technique which uses acquarial assumptions to measure the present value of forces people therefor and persoon fund pluministrative expenses, and which assigns the cost of such benefits and expenses to cost accounting periods.

"Accuracy gain and loss" means the effect on pension cast resulting from differences between actional assumptions and across representation.

"Actuarist liability" means person cost authorable under the actuarial cost method in use, to years before the date of a purcular actional walnution. As or such date, the actuarial inhibits represents the exects of the ferson value of the future boxefits and administrative dependence over the present value of future contributions, for the normal cost for all plan partie banks and honefitchards. The exercisinf the account hability over the value of the assets of a person plan is the unfunced actuarial hability over the value of the assets of a person plan is the unfunced actuarial hability that the unfunced actuarial hability of the actuarial hability over the value of the assets of a person plan is the unfunced actuarial hability.

"Amiliar al valuation" means the determination, as of a specified date, of the normal cost, schooled hability, value or the assets of a pendium fund, and other relevant values for the pension plan.

"Allocate" means in accompanies stem of cost intra group of stems all case, to one or name cost poyetimes. This term

includes both direct was growent at sost and the coassignment of a shore from an indirect year park

"Business unit" means any segment of an organization, or an online business organization which is not divided into segments.

"Compensated personal absence" jurious any absence from work for responsive hit as it ress, vacation, helifalys, jury duty, and tark training, or personal activates for which an employer pays compensation directly to an employer in associance with a plan or custom of the employer.

"Cost impul" means the cost except general and administrative (GAA) expenses, which for contract costing purposes is a health to the production of goods and vervices during a cost accounting period.

"Cost objective" as used in this part to not thun Subpart 31.6) Impany a function longer valuead subdivision, concart, to other work unit for which cost data are desired and for which provision is made to accumulate any provisors (i.e. what is processes, products, juby, capital and projects, etc.

"Cost of capital continued to families" means an impaired cost determined by applying a cost of money (and in reclines capital).

"Deformal compensation in means an award made by an employed to incompensate an employed in a future dest assessming period of periods for services rendered in one or more cost assessming periods before the date of the receipt of compensation by the employee. Post offertion shall not method the amount of year cost accounts for salaries wages, or bonuses that are to be paid within a macropable period of time after the end of a cost accounting period.

"Defined benefit per voir plan" means a pension plan in which has benefits to be poid, or the basis to: determining such benefits, and established in advance and the contributions are intended to provide the stated benefits.

Defined-contribution personn plans' means in person plans in which the companions to be made on invulbibled in advance and the penefits and determined transpared.

"Dignostly assessment open" monoclamy dest which is generated solely as a result of the increased or another most, and which which was have been incomed too the other now not been income?

Estimating could library the process of horizontal of a future result in terms of cost, based upon returnation averable of the time.

"Expressly unallowable cost" Heans a por cular item or type of cost which under the express provisions at an applicable law, testianton, re-contract is specifically named and stated to be unallowable.

31-2 (FAC 97-02)

"Facilities capital" incurs the net brock value of targible capital systemed of choice intargible capital assets that are subject to provetigation.

"Bural gost objectives" as used in this page imber than Subgards Plan and DI 60 means a post objective the rule allocated to stooch direct and jud and costs and an the contractor's incommutation asystem is one of the than accumulation proofs.

"History year," as used in this part, means the associating period for which appeal financial statements are regularly prepared, generally a period of 12 minutes, \$2 Acess, or \$3 were.

"Fugged primate, about to used in this part intends the personned primate tooks him a authors to private over all earthing period that has been good to a sunding agency."

"General and administrative (G.A.A) expense" purchasing management. (transpol and other endense which is incorred by self-boated to a positive unit and which is lift the general management and act mission of the biasonessy of the whole Gibb expense coes not include those management expenses whose beneficial or can self-those management expenses whose beneficial or can self-those management of object was case be none threat a massive transfer the property of these other than a cost reput base representant the total property of a flux total and of during a cool account of periods.

Home office intrinsian office responsible for turning or managing (wo op resert but not necessarily it is repriet as of an inspaniested. It is provide establishes policy bot, and provides guidance to, the depreciation their constants. It usually performs management, successing, is administrative functions, and may also perform server functions in support of the operations of the subject of the operations of the subject as septents. An observation which has intermediate levels, such as groups into high conversal functional sets which report to a continual field confider An intermediate organization may be to the apequity and a home office.

Immediate gain accounted east method interns only of the several actuar at cost methods updat, which persons gains and lasses are the idea to part of the unfured 200 grip. Jians by all the years on plan, when thus as part of the nonnances of the plan.

"Independent miscratic and development (IR 80) word means the Cold of effort which is neither someonthly a grant, not required in performing a contract, and which falls within any of the following four meas—

- par Basic research.
- (p) Applied (execution
- (a) Descriptions, and
- (4) Systems and other concept commission studies

riminest test peo s<sup>2</sup> as used at this pure father than S. Epsels 51.1 and 21.6), means groupous set incurred costs departed with two or more test copy, to be but the section for specifically with any light cost objective.

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Take a last set now be specified as a performance amployees performing in positions within the participal.

Lighter description and a means agree stablished network at the false election of cook, compound by multiplying larger rate standard by labor time standard.

"I see marketh to used in this you means a place where indirect also exchange their labor to compresses on Tables markets are identified and defined by a combination of the following latters."

- -1) Geography
- (2) Education and/or reclamped to key said required
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"I dono de sunderal intrase a perstablished 100 sone expressed in more this latter on the price of later."

"Igness time standard" means a provisable half describe, expressed in the yould tetrus, of the quartey of labor

"Majery one is conduct" industry program wood mansage of the questial elements of dest computed by malapising majoral-price sounded by material-quarty standard.

"Mulacial leade standard" meters a pasestable feet more sinc, expressed at monerary terms, of more passive indeer of

"Mystem quantity standard" means in presstabilised measure, expressed in objectal terms, on the quantity of customs.

Moving everage cools are used in what they discord method under which are average unit size on as required other

31.3

#### 31 002

each acculation by adding the unstraf the newty accuload only to the cost of the units of theenory on hard and dividing this figure by the new initial number of units.

"Normal cost" means the singual cost attributeNet goder the accust at each method in use, to yours soprequent to a particular via carron dute.

"Original complement of low cost injuryment" means a group of items accurred for the initial outlitting of a longible capital asset of or operational cost on a new addition to either. The domes in the group in lividically cost less than the minimum exposite realististed by the contractor for capitalization to the classes of asset conjured but in the appropriation prepresent a national investment. The group as a competence is expected in the ball for continued service beyone the current period. Into all our lating of the original operations.

"Favoury (sugar cost flattice") means a method or recognitive gipmorphicity only when begal to are pure to remed employees or their time fictures.

Personal piles, increase a deferred compensation planshablished and countried by one or more employees to provide systemic dall, for the payment of beterity in planshable appropriate after the configurations, provided, that the benefits are paid for life at the optimisely are paid for life or are payable for life at the optimisely in imployee. Additional contents such as permanent, and its implication y and death payments, and substituting payments to benefit diameters if decreased enjoyees may be attracted approximation of personal planshables.

Personn olds participant means any expression for met displayer of an emplayer or any member at harden member of the displayer organization who as or may become eligible to receive a benefit fixed a pension plant elimit covers employees of such employer or members of such organization who have satisfied the plants participated from minimum or whose landfelding state receiving or may be slightly to be over any such breefit. A participant whose employment states or the cover may be simpleful states or the employer law to be been employed to account to participated of the employer spension plant.

"Pricing" means the process of establishing in reasonable abbound or amounts to be outdoor supplies at services.

Prominents if as used in the part of the flow \$teparts 31.5 and 5. 60, means the smallest organizationally independent segment of a company charged by management with profession less responsible ties.

"Proposed average has "nor my the est mated lang-term average cost per primal for periods of the possible exposure to risk of these

The ested harmfloored method? the any of the key chall action of miss more as which distribute the exampled food most of all the employees, prospective benefits over a period years. Let the their work by contract

## FEDERAL ACQUESTTION REGULATION

"Proposal" means any affector other valuous sent used by a fless for othering a contrast, contact more free on the primation vesterment or for vacuumg payments incrounder.

"Residual value" means the proceeds, less remarkal and disposal cooks. Fairly realized upon disposal to of a rangiple days of lessen. In usually, a measured by the net powered from the Aule or other classes tool of the averture my fundable if the asset is Queed from another ways. The estimated invidual value is a correct forecast of the residual value.

"Segment" means one of ray or made divisions, product departments, placts, or other subdivisions of all argentization or performance of the excellent design appropriate with responsibility for tends; another producting a provider of several. The firm includes Government-now of contraction operated (GOCG) the lines, and print excellence and substitutions domestic and longing in which the organization lines a may provide substitutions of the second contraction of the organization for organization for organization of the or

Self-insurgace" means the assumption or retention of the risk of loss by the contraction whether relatitiesly or myolantasity for functional includes the cells table post or of purchased distances.

"Nell'unsurance charge" primato a post sello a representa no protected average has proper a sello esprence plan

Service held intensity per solid settliness of a tragble code 2. 1888; (or group of assets) to us come nowaes the period only be expressed in most of time or or partitle estimated service life of a pagitic capital asset for aroup or 1888; (i.e. come of forecast of its service life and or the period over which depressions cost is to be assigned.

"Social sain program look or record means any of the several projected benefit program look methods under which actuary grams and losses are included as period be custom and forces period with person update.

"brand and roof" inconverse cost computed with the user's processableships inconverse.

"Tangible digital assert incans as assert the mas physical substance, more than minimal value, and or expected on he hold the lattice that the remaining period for the services it yields."

"Turner ration gone on love interest an objective can be be cased ing from the difference between the assumer, and across rates at which persons printing outside approach from another than of transport of labelity of death.

"Vita Liwalile loss," means any root which, codes the journalist of any perturbation, ingulation for a contrast time not be included in process, continuous regenerations and the which it is allocated.

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#### PART M—CONTRACT COST PRINCIPLES AND PROCEDURES

"Unforcing persons plan," as used in this pair, means a defined hencity persons plan for which no funding agency is

"Variance" means the difference between a pressubhated measure and an acrual measure.

esizblished for the accumulation of contributions

"Weighted average cost" means an inventory cost. Ay method under which an average unit envi is computed peroadically by devicting the sum of the cost of beginning inventory play the cost of acquisitions by the total number of apply implicited in these two categories.

#### 31,002 Availability of accounting guide.

Contractors repairing assistance in developing or improving their accounting systems and procedures may request a copy of the gorde entitled "Guidance for New Comparisons" (DCAAP 7641 90). The gorde is evaluable from

Headquarters, Defense Coeurati Audit Agency Uperating Administrative Office 8723 Intro I Kingman Rose, Suite 2175 Fort Belvius: VA. 22060-5219 Telephone Au. (102) 767-1066 Telefax, No. (102) 757-1061

#### Subpart 31.1—Applicability

#### 31.100 Scope of subpart.

This subpart describes the applicability of the cost principles and processions in numeroding subparts of this part in various types or contracts and subcontracts. It also describes the most for accounty agreements

#### 31.101 Objectives.

It recognition of differing organizational characteristion, the cost principles and procedures in the succeeding subparts are grouped basically by organizational type; e.g., commercial concerns and educational estimators. The averal, abjective is to provide that, to the extent practica-No, all nightizations of stimilar types doing stabilar work. will fellow the same cost proviples and procedures. To achieve this uniformity, Individual devaauons concerning cost principles require advance approval of the agency. head or designee. Class deviauors for the civilian agencies. require advance approval of the Civilian Agency Acquisition Council, Class deviations for see National Acronautics and Space Administration recuire advance approval of the Associate Administrator for Producement. Class desiations for the Department of Defense require advance approval of the Director of Defense Procurement, Office of the Under Secretary of Defense for Acquisition and Technology.

#### 31,102 Fixed-pence contracts.

The application subpans of Pair II shall be used in the pricing of fixed price contracts, subcontracts, and modifications to contracts and subcontracts, wherever (a) cost analysis is performed or (b) a fixed-price contract phases requires the determination or negotiation of costs. However, application of east purchales to fixed-price contracts and subcontracts tha loop to convented as a requirement to reprinted agreements on individual elements of session arriving at agreements on the total price. The final prior accepted by the parties reflects agreement only on the total price. Further, notwithsteading the transferry user of any printingles, the abjective will continue to be to negotiate prices that are fair and east-order, door and other factory considered.

31,304

#### 31,103 Contracts with commercial organizations.

This category includes all contracts and contract modulications for supplies, services, or experimental, developmental, or insearch work negatiated with regulitations than educational institutions (see 31.104) construction and architect-engineer contracts (see 31.105). State and local governments (see 31.105) and nonprofit organizations (see 31.108) on the basis of cost.

- (a) The cost proceptes and procedures in Subport 31.2 and agency supplements shall be used in pricing regotiated supply, service, experimental, developmental, and research contracts and contract modifications with commercial eigennatures whenever additional is performed as required by 15.404-97.)
- (b) In publishing the contracting officer shall incorporate the cost principles and procedures in Sciepast 11.2 and agency supplements by reference to contracts with exermeteral organizations as the basis for
  - (1) Determining remutes able costs under-
- (i) Cost-reimbonsement contracts, and cost-reimbursement subcontracts under these combacts perSented by commercial organizations, and
- (ii) The contract Ebursement portion of circle-anomalizations interest materials contract, national when material is proced on a basis other change coal (see 14.681(b)(3)).
  - (2) Negotiating indirect cost total (not Subpart 42.7):
- (3) Proposing, regariating, or determining costs under terminated contacts (see 49.103 and 49.113).
- Price revision of lived-price stoeming common (see 16,204 and 16 403).
- (5) Price regotermination of power redetermination contracts (see 16.203 and 16.706), and
  - (6) Pricing changes and other contract resolition and

#### 31.104 Contracts with educational institutions.

This entegrity includes all contracts and contract modificulture for research and development, training, and other work performed by executional relatations.

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31.105

PEDERAL ACQUISITION REQUEATION

- (a) The compacting offices shall incorporate the rand algors and procedures to Subport 31.5 by reference in cost-reimboratoscal contracts with compational includions as the basis for—
- (1) Descripting reimbursear costs under the COS tracts and const-reimbursement subcorrects under mides performed by educational institutions.
  - (2) Negotianing indirect cost rains, and
- (3) Stelling trivia of cost-restributement retrainable contracts (see Subpan 49.7 and 49.109-7).
- (a) The east principles in this subproving to be used as a guide in evaluating tools in connection with negotiating facilities contracts and reminators sufficiently.

#### 31.185 Construction and architect-engineer contracts.

- (a) This category includes all contracts and contract modifications regented on the basis of cost with organizations ofter than recording institutions (see 31, 74). State and local governments (see 3, 107) and hospitality organizations except this element under OMB Cititular A 122 (see 3, 106) for construction management or construction, alteration or report of buildings, brackes, roots, or other known of real property in accommodes produce reporter contracts caused to construct or property. It does not not observe that seal are construct or property is deed to personal reserve.
- (b) Except as often wise jointhead in (d) below, the tisely principles and procedures in Arrigant 35.0 shall, be used in the princip of contexts, and context; modifications in 243-248. I gody if post analysis is performed as required by 15 404-1611.
- (c) In addition, the control to officer shall incorporate the ansi-proceptes and procedures in Subject 29.2 (as modified by (d) below he reference in contracts to this category as the pasts for—
- (1) Departmenting encodersable costs upder confidence horsement contrains including cost reimbersement automatics thereunder;
  - (2) Negenating indirect cost rates.
- Proposing, repolitating, in deterministrativessis ander reministed contracts.
- (4) Prior revision of likeo prior in notive Contracts: and
- (5) Pricing changes and other contract modefications (d) Except as otherwise provided in this principage (d), the allowability of costs for construction and architectural near conducts shall be determined in accordance with Subpart 31.7.
- (1) Recorde of wicely happing factors such as the estate, size, threation, and location of the unistruction project, advance agreements as set forth in § 109, for such items as notice office involveds, pariners compensation, employment of convolutions, and equipment usage costs, are articularly important in construction and architectory.

neer contracts. When appropriate, they serve to express the pursued understanding and excital provides subsequent disputes or distillusionees.

- (2) "Construction equipment," as used in this ecoloris, means equipment, the eding modium equipment, in nound workable consenses, either owned or control of by the extruction of the subconsenses at any net, or obtained from a geometrical legical source, and functional legical ender Congruence from the Congruence for interest.
- ( ) Allowable ownership and operating costs shall be determined 45 0000 st.
- (A) Actual desi data shall be osni when such data can be constrained for both owners to and operations. costs for each piece of ecopyment, or groups of a local seris) or series rigingment. Iron the conditions is accounting reverds. When such consciounnel se so determined for conscious training agency may specify the nor of a purcular screed, it of predeficining listes or any pain thereof its determine OWN. eaship and operating costs to construction reportional (see subdivisions (d)(2)(-)(B) and (C) to this section. However, costs atherwise unallowable tooler this past shall not become allowable through the use of any attrebble (see 30 (109,ct). For example, schedules need to be adjusted for Government contrary rowing purposes if they are haved onreplacement cost, include analtowable interest costs, or one improper cost of excess rates or computations. Contacting efficers should review the computations are exciters moladed within the spreaffed schedule and coston that unall gwalde in unadespiably computed factors are not allowed. cos: uremissiona
- (D) Predetermined schedules of determined opposent use raws (e.g., the Construction Feuipment Ownerchip and Operating Expanse Schedule, probability in U.S. Army Corps of Engineers, indestry opposered construction equipment test garder, or enumerically probabilistic ownership and operating more for density and operating more for density and equipment we test provide average ownership and operating more for density construction equipment the allowance for operating order (a), and probables are grown and maintenance, and the write repairs and maintenance, and the write and repair Chief of Labor, modulations, demebilization, we should add profit are generally not reflected in schedules and separate consideration may be necessary.
- (C) When a smoothle of predestrained ose taxes for construction equipment is used to determine direct casts, all costs of equipment that are included in our and allowances provided by the scription shall be identified and electrated from the contractor's order cases and indirect taxts charged to the contractor's accounting system, provides for after a home office overhead allowances and casts, which are individed in the equipment allowances and, deed to be individed as allowances and, deed to be individed in the equipment allowances and, deed to be individed in the equipment and contracts and, deed to be individed in the equipment.

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#### PART OF COMPRACT COST PRINCIPLES AND PROCEDURES.

31,866-2

of suspension of Aark pursuant in a contract clause, the allowance for equipment invited by shall not exceed to amount for standby cost as determined by the ecoed,  $\kappa$  or capital provision

- (in Reasonable costs of repling construction equipment are allowable (but see paradraph (C) of this subsection).
- (A) Coess, such as maintenance and minut or running repairs indicent to operating such renied equipment, that are not included in the restal rate are allowable.
- (2) Cosis inazioni io major repair are overhool of renial equipment are enallowable.
- (C) The allowability of charges for construction equipment retried from any division, superciary, or arganization under continuo control, will be determined in subgrounder with 31 705-36(b)(3).
- (3) Costs isourced at the job site inducent to perform they the word, such as the cost of superintendence, i makesoing and district work, engineering, utility costs, supplies material handling testoration and clearup, etc., are allowable as direct in indirect loops provided the accounting practice used to in accordance with the commat totic established and sousistently rollowed and accounting practices for all work.
- (4) Remail and any other costs less any applicable credits incurred in acciding the temporary use of land. Courtured and facilities are allowable Costs, less any applicable credits. Incomed in constructing or fabricating structures and facilities of a temporary nature are allowable.

#### 31.106 Facilities contracts.

#### 31,106 5 Applicable cost omnubles.

The cost grinciples and precedures applicable to the evaluation and determination of costs upder facilities contracts (as defined in 45 301), and subcontracts thereunder, will be governed by the type of endty to which a facilities. contract is awarded. Except as otherwise provided in 11,100-2 of this section, Subpart 21.2 applies to tabilities contracts awarded to commencial organizations, Subpart 34.3 applies to facilities commetts awardoo to courational institutions: and \$1,105 applies to facilities contracts awarded to construction contractors. Whichever cost prize is pley are appropriate will be used in the priority of facilities. apprears and contract mudifications if east analysis is preformed as required by 15.404(40). In addition, the contracting officer shall incorporate the cost principles and procedutes appropriate in the atraumstances to g., Subpart 31.0 Subplier 31.20 or 20,185; by reference in carabites conmacro as the basis for-

(a) Determining reindorsable costs under lactifies corresers, including cost-reindorsement submittacts thereunder.

- (b) Negotiatine matters and rates, and
- (a) Determining cover of ferminated contracts when the compactor elects to "voucher out" costs (see Subject 49.3), and for settlement by determination (see 49.105.7).

#### 180-2 Exceptions to general roles on allowability and allocability.

- (a) A committee is established accounting hysteric and procedures are normally directed to the reprintion a location of works to the typics of positions which the contractor occidutes or services rendered in the course at normal operating activities. The acquisition of no work on, facilities for the Concommon normally codes not involve the manufacturing processes, plant departmental especiations, and patterns of work, administrative and managerial corottol, or obtained from a seal of production or the contractor's normal proaducts of services.
- (b) Advance agreements (see \$1.09) should be stude between the confession and the dentilisting obliger as streatment cost items to be applied to one for tops appliance. A commandate's normal accounting practice for allocating teditions costs to the acquisition of dentilation facilities may stage from sharping all these costs to the acquisition to occur from the group all these costs to the acquisition to not charging any. When invested you produce an equipable result, the contractor's usual method of allocating induced cost shall be based, and appropriate adjustment doubline make to the goods of inscreen cost shall be based of their distribution.
- (2) The purchase of completed functions (in services in connection with the facilities) from only despitely does not revolve one connector's direct facor or indirect plant main tenance personnel. Accordingly, induced manufacturing and plant everteed losts, which are primarily received or generated by reason of direct labor or instructionare taken representations, ser not a locable to the enquisition of your facilities.
- (d) Contracts providing to the establishen of new facilities or the reliabilitation of earthing facilities may adveloc the use of the contractor's plant maintenance before, as distinguished from direct labor regagns in the production of the congrany's normal products. In sect instances, only those types of the rect manufacturing and plant operating costs that are related to be matured by reason of the expenditures of the classes of labor used for the performance of the facilities work may be alligered to the facilities contract. Thus, a facilities contract which include the use of plant mannerhance labor only would not be subject to an allowing mannerhance labor only would not be subject to an allowing supervision, depreciation, terms as direct productive fabor supervision, depreciation and maintenance expense applied by the facilities contract machinery and equipment, or raw material and finished goods storage chairs.
- (e) Where a likelithes contractionals for the construction, production, in reliabilitation of equipment or other terms.

31.7

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31.106-3

If the involved in the ingular course of the existencial subsess by the use of the contractor's direct labor and manifoldering processes, the indirect costs inwinally allocated or all that work may be allocated to the facilities contract.

#### 38.106-3 Contractor's commercial Rems.

If farilines consulting the emerator's usual committee for recity many mody-Positions theteoff are sequined by the Government under the contrast the Government chall not pay any amount in excess of the contrasting most favored season's most favored season between the square for the quantities of the sources substantially the came needs, whichever is lower.

# 31.107 Contracts with State, local, and federally recognized indian tribal governments.

- (a) Subport 31 in provides principles and standards for determining costs applicable to contracts with State, local, and feiterally recognized Indian tubal governments. They provide the basis for a uniform approach to the problem of determining costs and to provide efficiently and letter relationships because State, head, and federally recognized Indian cibal governments and Federal Government untities. They apply to all programs that involve contracts with State, local, and federally recognized Indian cibal governments, except contracts with—
- (f.) Publicity financed educational confidence subject to Subpair  $\mathcal{P}(0,\omega)$
- (3) Publicly inweed hospitals and other providers of medical due subject to requirements promogated by the sponsoring Government agencies.
- (b) The Office of Management and Budget 4:III approve any other exceptions in particular cases when adequate just officialism is presented.

#### 31,306 Contracts with comprofit organizations.

Subpart 51.7 provides generables and standards for deterning costs applicable to contracts with numeral a organizations other Clan educational institutions. State and local governments, and those temperals organizations exempted under OMB Circular No. A-132

#### 31.109 Advance agreements.

(a) The extent of allowshilling of the costs constrain in this part applies broadly to many ascending systems in varying contract simulation. Thus, the innormableness, the allocability and the allocability and the allocability and the allocability and the specific cost principles at Subparts 31.2, 31.5, 31.5, and 31.7 of certain costs may be difficult to determine. To avoid possible sussection disablewance or dispute based on unreasonableness, anallocability or anallocability mandot above the specific cost principles at Subparts 31.2, 3, 3, 31.6, and 31.7, commenting officers and contractors should such advance agreement on the great costs.

of special in unusual cours. However, an advance agreement is not an appeloir requirement and the absence of an advance agreement to any cost will not, in itself, affect the reason atteness, allocability in the allowability under the appelification principles at Subparts 3, 2, 31,7,7,7,6, and 51,7 of that not

- (b) Advance agreements may be negotiated either before or during a control but chief it in regulated before incorrect of the roots involved. The agreements must be in whiring executed by both controlling parties, and incorporated although opposite control and outline contracts. As advance agreement shall contain a statement of its applicability and outline.
- (a) The contrasting entities is not authorized by this 3.9 (0.9 to agree to a treatment of costs through stand with this part. Her example, an advance agreement may not provide that individuality 31,202–20, interest is allowable.
- (d) Advance agreements may be negatived with a parcipalization from a single contract of group of contracts, or all the contracts of a runtificing office, an agency, promoeral agencies.
- (e) The adjuster advantants as contrating offices (ACO), or other coefficient effort notablished in Pan 47 shall respond advantal agreement effort notablished in Pan 47 shall respond advantal agreement effecting office shall be negotiated by a correspond office in the contracting office, or an ACO when delegated by the contracting officer. When the negotiation authority is delegated, the ACO shall coordinate the proposed agreement with the contracting officer became executing the advance agreement.
- (f) Service regulating an advance agreement, the Government regulates shall -
- (1) Determine if other contracting ordices inside the agency or in other agencies have a vignificant unfiquidated delian Salance in companies with the same contraction.
- (7) Inferon 219 seen office or agency of the matters under consideration for negotiation; and
- (3) As appropriate, invite the affice or approximation cognitizant suitifusyency to participate in prenegotiation discussions and/or mithe subsequent repotiations.
- (g) Tipon complaint of the reposition, the sponsor shall prepare and another another interested agencies and offices including the audit opency, respect of the executed agreement and a minimal providing the information providing in 12,406-3, as applicable.
- the Enamples of costs for which advance agreements may be particularly important are—
- (1) Compensation for personal services, including but not limited to allowances for off-site pay, inconting pay, location allowances, hardship pay, and of higher tial, and remination of defined branfit person plans.

## PART A. LUDNITRACT COST PRINCIPLIES AND PROYEDURES

- (2) The charges for fully deprecised assets
- (f) Tofmied mante rated cost
- (3) presentadousis,
- (s) Independent messeuh und development and his und presental edits.
  - (for Royalt extend other costs for contol paterty
  - (7) Felling and Jish Sunon Soos:
- (2) Towel and relocation costs, is matrix to specially mass personnel most one is, as related in investigation reaction with the source of polytopic words of orbital editional arterials, or average of international periods.
  - por Chaps of filly facilities include capacity.
- $_{\rm L}$  (O). Note that the pattern contribution is a support acts of grounds in
  - () in Plant resource and
- The Eppironium versions of  $\xi$  , legal, boundaring and any territy).
- (iv) General and accomishable costs in g., corpotate always of transfer associated attributable to the general consequences, succession and resolution the Corgraphy which track as a whole. These costs are particularly symmetric in construction, of succession particularly resoluted and flower count oward contractor expected (GOCO) plan controls year 1, 202,000.
- [42] Costs of construction plant and egoporus over 20 105(4).
  - (19) Costs of public relations and according and -
  - (in Trumby and edicorphopological II 009 44 lpt.

#### Jidy fractional and state conflictation and penalties on unationable creats.

- (a) Certain compares require continuation of the reductions rates, proposed for final pusitions purposes. See 49 703-1 for administrative potentials regarding the certain purposessors, and the related continuation cluster prescription.
- (b) If realthy dide costs are ord, did in final indirect cost sentement proposals, penalties may be associated. See 42–609 for administrative procedures regarding the penalty assessment provisions and the related contract closes primariphos.

#### Subject 31.2—Contracts with Commercial Organizations

#### 31.201 General.

#### 31.101-1 Composition of total circle

(a) The total cost of a contract is the sum of the direct and indirect mosts allocable to the contract, incurred or to be incurred, less any allocable cost of money pursuant in 7, 295-10. In ascertaining what constitutes is cost inny generally accepted method of determining or resignaling costs that is equitable and is con-

magety applied may be used the dainy simulationals proceedly adjuved for applicable curanity. Not 21 to 30 to and (2) to Cast Accommony Standards. UASS requirements.

31,201-1

the While the root test of a contract follows all costs properly allowable to the contract throatenable costs to the Government are contract to those all width costs which are a movable processor to Part 12 and applicable areas supplements.

#### 31,201-2 Determining allowability.

- (a) The rations to so consistent is detecteding whereing assists of covable mail do the following
  - (1) Reponetletess
  - A confulty
- 13) Subdivide promulgated 3) the CAS Boulde of applicables concretions (generally incorpled a resolution posciples and processes secreptually to the parallelar informations.
  - 14 in Tentry of the purposes
  - (5) Any his tare by set high motor subpart
- rsy Ceramic step it uples or the compact many other than mgasyrrainat, excignment, and attitions by other of selected r AS and limit the allowability of closes to the amounts desertined going the arrangem (bos) to good standard Only those UNS or premius at standards specifically made applicable of the environment as in this support are mainly. they indeed the control is 1147 consisted time from 500 Business units that are not cahenoton subject to the entitle. dants under a CAS allage art surged to the selected consider to be a finished purpose of their mining of coverables. of coop on Communicationalities, including the selected standards in process, principles does not subject the beauties. unit to any other CAS (a ay and regulation). The sophicalidby of the CAS rules and regulations to determined by the CAS clause, it any, in the contract and the requirements of day standards the risk ses-
- (c) When contractor regions by practices the incorrections with this Subcart F 2, closes insulated from each incorprise of practices shall not be allowed in excess of the amount that would have resulted from many practices consistent with this subpart.
- (d) A contractive is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to deman strate that costs that do have been included, are allocable to the contract, and comply with applicable cost principles in this subscan and opening supplements. The contracting officer may disable with opening allowed for paning in almost cost which is inculaquately supported.

#### 31,201-3 Tietermining reasonablaness.

(a) A cook is reasonable if in its nature and amount, it ages not exceed that which would be incurred by a proximal

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primer in the conduct of tranget five business. Seasonableness of specific easily most be examined with afficular care in corrector, with firms or their separate divisions that may not be subject to effective compenitive restricts to presemption of reasonableness what he adulthed to the incorrect of costs by a contractor if an intellective of the facts results in a challenge of a specific cost by the contracting officer or the convecting officer is representative, the families of proof shall be upon the contraction to establish that such cost is representative.

- (b) What is reasonable depends upon a variety or constitutions and consumorances, including —
- (3) Whether it is the type of east generally recognized as are sury and archystry for the conduct of the contraction's husiness or the contract performance.
- (2) Generally accepted would have now graphices, arm's length bargaining, and Federal and brate laws and perpulsions.
- (3) For contractor's responsibilities to the Government, other customers, the owners of the business employees and the public of large; and
- 141 Any significant devictions from the contempor's naish shed produces.

#### 31.201-4 Determining allocability.

- A cost is a locable if it is assignable or chargostrie to one imprecion object, sex on the lossis of relative benefits either often equalable relations to Subject to the fine-going work is a locable to a Government contract of the
  - (a) Is incurred specifically for the contract:
- 10) Benefits toth the recrease and other white and can be distributed to them in reasonable proportion to the benefits today ved; or
- (c) Is necessary to the overall operation or the business although a diamet relationship to any particular cost objective connectibe shows.

#### 31.701-5 Credits

The applicable portion of any material refere, all ewance, or other credit relating to any allowable cost and received by an admining to the contractor shall be escalable to the Conversament either as a cost reduction or by each refund. See \$1.205-6) (44) for roles related to refund or credit to the Coversament upon learnings and an over-lander defined benefit pension, plan.

#### 31.201-6 Accounting for enallowable costs.

(a) Costs that are expressly unaflowable to mutually agreed to be unaflowable, including nurtially agreed to be unaflowable discretized and excitated from any billing, claum, or proposal applicable to a Government conduct. A directly associated age is any it which its generated valley as a result of incurring.

another cost, and which would not have here integred had the other cost not been maured. When an original shield on the incurred, the discody preoclated upon aim styp unallowable.

- th) Flosts which specifically between designated as unallowable by as unallowable of a unallowable directly associated reveloped unallowable costs as a result of a worten deriver from peted by a compacting officer shall be almosfired if included in or used in computing any belling, elam, or proposal applicable to a Conventional product. This ideal decision responsement applies also to any coast included for the same purpose under like circumstances by the costs specifically. Centified as a unallowable under either this paragraph to prosprage (2) above.
- (c) The practices for additioning for and gress-ration of unallowable costs will be those as described in 44 CFR, 99/94 405, According to: Orallowable Costs.
- (c) If a directly associated dual is included the authority which is allocated over a base that includes the authority associated over a base that includes the authority associated does shall remain in the soal pace. Among the unallocated costs will attract their allocated pace of costs from the act produce further native is required in assure discillationary of the directly associated costs. In all soften overs, the directly associated costs. In all soften overs, the directly associated costs, it may be more units be purged thought costs pool as more allocated costs.
- $\sigma(G)$  In determining the materiality of a three y associated about consideration should be given to the a problem of  $\sigma$ 
  - (i) The second dollar account.
- (iii) The constative effect of all directly associated costs in exact peoply or
- (iii) The ulcosate effection the environ Severences contracts.
- (2) Salary expenses of employees who peniorpate in activation that generate unallowable costs shall be heated as directly associated does to the extent of the time agent on the prescribed activity, provided the costs are material to accordance with subgroupgraph (e.g.) above (except when such spilary expenses are, themselves unallowable). The other spent in prescribed activities who id be compared to ottal time spent on company activities to determine in the roots are material. Time spent by employees notated the mormal working hours should not be considered record whom it is evident that an employee engages so frequently in company activities that an employee engages so frequently in company activities during periods particle normal working hours as to edicate that such activities are a part of the employee's regular codes.
- (3) When wholested little of cost order all 205 provides that directly associated costs be unable—206, in its intended charsoon directly approximated costs be unable-wayle only if determined to be material to amount to accordance with the unstrial provided in subparagraphs (e. 1); and (e. 3).

31.10

31,2113

of this section, except to under studeness where allowance of any of the directly associated costs involved would be considered to be constary to poolic policy.

#### M-201-7 Construction and architect-engineer contracts.

Specific principles and procedures for evaluating and determining costs in connection with contracts and septembers for construction, and authorst-engineer contracts related to construction projects, are in 31,105. The applicability of these perceiptes and procedures is set forth in 31,000 and 31,100.

#### \$1,202 Direct costs.

- (a) A direct cost is any cost that can be identified specifically with a particular final cost objective. No must cost objective shall cave allocated to it as a direct cost any cost, or other costs incorrect for the same purpose in like or outlier costs incorrect for the same purpose in like or outlies tances have been included in any indirect cost total to be allocated to feat or any rober. But licher objective. Costs identified specifically with the contract are offer costs of the costract and are in the charged directly to the contract. All costs operationally contribed with other final cost objectives of the contraction are direct costs of those cost objectives and are not to be charged to the contract directly or indirectly.
- (b) For reasons of peachedity, any direct cost of order deliver amount may be beared as an indirect cost if the accounting treatment—:
- Is convictorally applied small final cost objectives;
- (2) Produces substantially the same results as treating the new up a direct cost.

#### 31,203 Indirect tosts.

- (a) An indirect cost is any cost not directly identified with a single, hiral cost objective, but denumed with two or mine final cost objectives or an interruption of two objectives in a sect soft ective desirrect as a direct cost. After direct costs have been determined and sharped directly in the Doubtest on either work, indirect costs are those minorang to be allocated to the several cost objectives. An indirect cost shall not be allocated to a final cost objective. In other costs incorned for the same purpose in like discuminances have been included as a coront cost in that or any other final doct objective.
- (b) Indirect costs shall be accumulated by logical cost year-page with due consideration of the reasons for overring such costs. Each grouping should be determined so as year-permit distinct on roll the groupery on the basis of the penefits accruming to the reversal cost objectives. Common yearmanufacturing overneeds selling expenses, and general guill administrative (G&A) expenses are separately grouped. Similarly, the particular case may require succivision of

- these groupings, e.g., building adequately costs might be Repairable first three of personnel administration within the manufactioning overhead group. This receives to which the prouping is to be allocated. The flavor should be streeted on as to permit allocated of the pouping on the basis of the benefits accreting to the several tost objectives. When substituting this water insults can be contained example from procise methods, the number and composition of lever groupings should be governed by practical considerations and should not upoetly completes the afterestors.
- (v) Once an appropriate base for distributing inducer costs has been excepted it shall not be fragmented by removing individual elements. All dates geoporty recludable in an ordered must been should bear a one test state of indirect costs. The specials on their waterstance as Gineriment contract (w) a For example, when a cost input base is used for the distribution of the About, all despitual base is used for the distribution of the cost input base, whether allowable or unall owable, shall be included in the large and bear their promata share of GAA mode.
- (0) The contraction's method of all occasing indirect costs shall be in accordance with standards generalizated by the CAS Board, if approached to the contract, otherwise, the method shall be in accordance with generally accepted seasonably proceiples which are consistently applied. The method may require examination when
- (1) Substantial differences usual between the own patterns of work order the contract and the contractor's other work:
- (7) Significant manger occur in the nature of the business. On extent of subcontracting, fixed asset improve ment programs, invertances, the volume or vales and production, manufacturing processes the contractor spructuess, or other relevant circumstatees, or
- (3) Induced cool groupings developed the a countainor's primary libration are abouted to offsite occupies. Separate cost group; igs for costs undeaded to offsite librations may be necessary to permit equitable distribution of costs on the basis of the respective secretary to the service cost objectives.
- (e) A base serior for allocating induced costs is the cost successing period during which such ducts are included all accomplished. For distribution in whice performed to that period. The infects and guidance in 30,406 for selecting the cost accompling periods to be used in allocating increases accompling periods to be used in allocating increases subject to the CAS developed For contracts subject to the CAS developed For contracts subject to the CAS developed of mini-CAS-universe co-tracts, the base period for allocating indirect costs will incomplify to the operation's flows, yet in the absumpt period may be appearance (1) for contracts in which performance involves only a minute position of the fiscal year or (2) when it is general

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3].204

FEDERAL ACQUISITION REGULATION

vacuate in the incusing in true a shorter behood. When a contact as performed over no cauchded period, as many both periods (Stall be used as are required to represent the period of minimal performance.)

(2) Springle care should be exercised to applying the panicipies of paraprapta (b). (c), and (c) allows when Government invarial contaction operated (GOMO) plants are involved. The distribution of corporate, division for humble editie Giáth expenses to such plants operating with finding an dependence on corporate administrative activities may require mone precise cast proopings, detailed accounts screening and confully developed operations bases.

#### 31.204 Application of principles and procedures.

(a) Costs shall be playword in the extent they are resourable allocable, and documentation be allowable under PLOCI, \$1,203, 91,303, and \$1205. These content apply of all of the selected terms that follow, even if panels are guidance is provided for certain jump for emphasis of clarity.

(b) Chais incurred as reimbirerments or payments to a cubernitization under a cost-minimization. Index provide intentive in: price redeterminable type subcentract of any time above the first firm-frarel-prior pulsaments and automatical with economic price adjustment provisions are automated to the economic price adjustment provisions with the appropriate separate of this Part II applicable to the subcontract involved. Costs interted as payments under little fixed price subcontracts of fixed price subcontracts with economic prior adjustment provisions or modifications thereto. When cost analysis was performed under if 4044 full, shall, be allowable only to the extent that the prior was negotiated in accordance with 31 192.

(c) Section 31,305 does not cover every classed of CDS. (affort or include any isom of cost does not imply that it is either actiowable in usual lowable. The determination of allowable report and the based on the principles and standards in this support and the treatment of similar in refused or the support and the treatment of similar in refused series. When there that one whiteholder is 37,205 is relevant to a similar object of cost, the cross-shall be upcompared aroung the applicable subsections, and the determination of abstractibility of each portion shall be based on the guidance contained in the applicable in \$1,205 is relevant, consists to appear cond, the determination of allowability (2.31) be based on the guidance contained in the values Loss that most speculiarly deals with, or bey imprines the essential name of, the cost at 3000.

#### 31,263 Selected metro

## 31,205-1 Public relations and advertising costs.

pay "Public relations" presps 20, functions and activities deficiented to-

- Maintening programs, and enhancing the make of a concern or to products; in:
- (2) Mainta amp or premoting trapersul materialising and favorable estations with the public or large, or any segment of the public. The term public relations inclodes according proposition with deeds such as adventising, our terms is outers incl.
- (b) "Advertising means the use of media to promote the sate of products or services and to accomplish the act sides referred to in paragraph (d) of this subscribin, regardless of the medium employed, when the advertises has control own the form and content of which will appear the medium which it will appear, and when it will appear the remaining these standards on any rot content to convertions, exhibits, these poods, samples, magnitude, to we explayed intake papers, affecting, legaler confe, within a captage authors advecting, cealer confe, within a captage authors advecting, finding advectional captage and television.
- (c) Fusion relations and subseries by coordinate the roots of media time and space, promised services performed his austide organizations, as seril as the applicable pretion of salaries, travel, and fining benefits of ampleyons mayaged in the toractions and activities store had an paragraphs (a) and (b) or to a subserior.
- (d) The self allowable adventions over up those that
- (1) Specifically required by minimum to that wind from requirements of Covernment correspondent foot we reclaimed the
- (i) Rectaining personnel required for performing numbershall (Alightons) when experienced in complexition with all other rectainment costs (but see 3) 1065-346;
- (ii) Adquiring stance nems for correct performance, or
- (ii) Disposing of scrap or surply materials, acquired for contract performance.
- (7) Costs of adexines to premied stack of products turned wishle to the U.S. Gewernment including trade shows, which contain a signalizate offer in products expects from the United States. Suggestions are allowable united transling subparagraphs (%) (1)(1) (1)(1)(1)(1), and (1)(1)(1) this subsection. However, such cases do not the ade the cases of interpretability as guidentials, gatts, and source set (2)(2)(1)(1) between the models, gatts, and source states write are permanity used to: stricttingen models are premanity used to: stricttingen models are premanity.
- is: Allowable public retaining costs include the followings.
  - 71) Ogga specifically recorded by CONTAC
  - (2) Consuf-
- (i) Responding to inquiries on company selicies and according.
- (ii) Communicating with the pulsation pleas, \$100km horizons, and automorphism, and

31.12

31 205-6

#### PART 31 41 ONTRACT COST PRINCIPILIS AND PROCEDURES.

- can Combating ceneral for on only rows methe and type epiment public mentions off acres, to the entered that such act series are immed to communicative and fluxed represents to keep the public reference on majoris of public centern such as more of control awards plant closings of upcomes complessed by offs in reference. Sustain all ordernation, the
- (3) Uneswed participation must mainly letter and steel (e.g., blood bank drives, other ty throod, but tays form drives, disaster assistance, etc.).
- (4) Coop of plant terms and agen bruses. But we suft plants up to 5 year this subsection.
- (§) Covered level taying slop autobate commissionage and two out ceremones, to the extent specifically provided for by one duct.
- of applicability poblic relations and adventising posts include the following
- (1) All ordine relations 2nd Advertising Association than those specified in pringraphs of such et al. this subsection whose problem purpose is in promote the said of products or services by sumulating interest in a problem in product the receiption those continues allowable under the disassination of producting the disassination of products of the disassination for purposes calling two rates are minutes in the company magnetic services.
- (7) All codes of mate shows and other special counts which do not contain a regnificant effort to promote the expect sales of products resmally well to the U.S. Geographics.
- (i): Costs of symposing mentings connections sympositi, seminal and other special symbols when the principal purpose of the event is influe that disserting on of section in internation on such, upper of production.
  - (4) Costs of ceremonies such as
    - in cospera y relabilitions and
    - a Sea product automatically
- 5) Costs of politograph mass of, manuscipalines, agostipes fluorizates fluoridades, threat test of other negligible, any designed to call testingles attended to the confidence and additionable to the confidence and the first politics.
- requires of sourcents, most a imprimed coming persons, and other mentioning provided to customer of the matter.
- Casis of months/ships to cover and community organizations.

#### 31.208-1 [Hesesved]

#### 31,205-3 Rad delite.

Bad Jobje, including install of estimated boses of sitution office, earlife regionary near those directions assumed and other claims, and any different costs of the costs of the content of the angle of the costs of the parameters are the costs of the

#### JL205-1 Honding rosts.

- Tel Banding considers when the Communicative quies assurance egains intuited loss (so seek to cohers by mose of the eat to detail of the contractor may stress down instances where the contractor recurds similar assurance hashaful are such to make as but the territative, common advance programs of a security and field to foods.
- the Covis of position requires presulted to the forms of the contract are \$15 wable.
- toy Coast of bording recoved by the information of the general emphasial its besones are 3% webby action in the that the bording is at act of large with a unit business practice on other cases not premium and recoverable under the circumstance.

#### 31,205-5 Civil detense tosts

- can Clear detense costs are those of, three in plant in the area protecting of an apparent to age. 18th the gossible effects of agray most. Costs of cost action of mean costs (1600 for clear process) of means in the policy form costs. 16th of many grant supplies the figuring in many and equipment particles for figuring in many and equipment and detense the force of means, and other approved and detense the force of means in a proportion of great defense authorities are allowable when all symbol of great defense authorities are allowable when all symbol of great defense authorities are allowable when all symbol of great defense authorities are allowable when all symbol of great defense authorities.
- pay Cover of capital communiquements and deletes 500 pages are allowable through depressional see 51 005/11.
- to a Contributions to local less locales or funds and conports are multiplied to

#### )) 305-6 Comprimation for present set does.

eta Concent Compensato e Los personal servici-(4) December of the matter of the problem of the problem. whatever form and whicher product me documentally redfor so vides, a plantal by endowings to the contrast and onper penuli et la ilitaat partetivates, es sestius ethernise provided for a collect paragraphs of this substantial of melides. but is not limited to saration, wodes, correspondently cores of committee members' toys. Both on Chelother speck Samuels, inertable Leading in a please states of their and speck approximent rights of order as a shock low tensory plans, employed informac, funge brookets assorbhet of site pendion, other postionremon benefits, and Sciotti employee regentive compensation plans and a local wester efforisigns, interfase (a), by care a considerable pay recommand pay and accident being differently Compensation for personal services in the With Sub-School (5g Johnson) general cottons and assume all representation contained in other pairs of this cost proyagits

71.13

#### 31,105-6

- (1) Compensation for prevent's services trust be for york performed by the employee in the content year and was not represent a retrouctive self-ordered of poor years' soluties of wages, but set \$1.205-bigs, thu (d. (E. (m)) and (n) of the support on).
- 171. Yhd compeniatios of solal growing reasonable for the work performed, bowever, specific resistances on aid vidual compense on elements must be observed where they die personal.
- (3) The concensation must be based upon and conform to the temporary conditions of the exercision of establishing compensation plus in principle to lowed so consistently as it, unply, in rffect, an agreement to make the payment.
- (ii) Dis présumpt on at allow hillry wall exist where the contraction into a ces major revisions all reacting monpensating plans of the plans and the exerciscités.
- (i) Has not notated the engaging ACO of the changes called before their implementation or wallong a resenable period after their implementation, and
- (ii) Has not provided the Government, either before implementation in within a reasonable period after it, an opportunity to review the a lowability of the changes.
- (5) Cooks that are unallow able under other paragraphs of this Subpart 31.2 shall not be allowable under this subsection 31 205 of solely on the pasts that they conseque improved on for personal services.
- Of Renamblemo. The compensation on personal ceresces paid or occurs to each employee must be reasonable for the work performed. Compensation will be the offered reasonable of ruch of the allowable elements making up the couployee's compensation passage is reasonable. This paragraph addresses the reasonable tests of compensation of set by proviously of a labor-management agreement under terms of the Fellowal Labor Relations Act in similar sizes statutes. The tests for reasonablement of facer management agreement agreement agreement agreement agreement agreement agreement of the paragraph is not only a beginning addition to the grown and STOT At in testing the example years of the positional elements for paragraphic employees of Obstavers of employees, consideration does divide growing effective by the congruing orficer.
- (1) Althory others factors which may be relevant include graced uniformity with the compensation gracitiest of other firms of the same side, the compensation practices of other firms of the same industry, the compensation practices of frontier the same geographic area, the compensation practices of firms, engaged in predicts namely non-Covernment work, and the coop of compensation services obtained from covered sources. The appropriate factors for every using the real-orable may of compensation depend on the degree to which those factors are representative of a latter market for the job being evaluated. The relation

PROPERTY ACCOUNTY ON RECOLATION.

significance or tautors will very according to the amornings. in administraing to a principle, it is inorgalized that not every compensation case need be subjected in detail to the tests described in this most principle. The tests note be applied only when a general leview recept amounts of types of compensation that appear unreasonable to unjugate fice. Blased on an unful review of the facts, companing officers or their impresentatives may challenge the reason. ablaness of any ordiscould element or the sum of the reduciduz, elements of compensation paid of accused to purticular employees or job classes of employees. In such costs intotalis no presutificial of prosphableness and, upon scallenge, the contractor must denicostrate the tensory signess of the compensation from in question. In doing so, the contractor may are also and the contracting officer will consider that only any already convex statement to the more Sensation, Jensiehn lenged, but also the mapropose of other compensation elements which may be lower than 400 M beconsidered casimaldrate the settle. However, the con-Cause's right to introduce offsetting compensation. elements (pro consecution is subject to the full-twing I = tanons

- (i) Other will be considered only someoning the photophic elements of an employer should see class in employees't compensation policipal or between the compensation purkages or employees in jobs within the comjuly grade or feed.
- out 100 between the considered only between the allowable partial of the hollowing compensation elements of non-loyees or too classes of employees.
  - (A. Wages are, salaries
  - (B) Increase bungles.
  - (С) Вебстей сопреживан
  - (D) Felly on and sayings plan begands.
  - (F) Health invarance benefits
  - (b) three source benefits
- Of in Clothernouthin personal an engagements. However, any of the above elements or purpose thereof, where amount is not measurable, shall now be unexpected or room larged as an order them.
- One in converging officers, the magazinus of the compensation it emerges in question, must be taken from the concern in the congentuals of compensation elements, the image of many thy the supplieses must be considered.
- (7) Companyation codes and executive shall the given the code need to expected consideration. Among right concitions are the half-owing.
- to Compensation to An assess of charge have compositions, but there were proportions, to members of their miterial trained by the Hill persons, who are contracting to Govern the trained to acquire a subsiging all I same all interest on the contraction's enterpt, or Detect, watton should be made that

splicible are environmental for the personal services rendered sather than being a describition of profits. Compensation in lie, of subry for services rendered by portions and sate par prieries will be allowed to the extent that it is reasonable and does not constitute a distribution of profits. For absolute a distribution of profits. For absolute a conference, isompensation code covered by the subdivision shall not be accognized in amounts a specific those codes that are discounted as compensation and of the forestal Revenue Code and regular one under it.

- into Any change in a contractor's compensation policy that results in a scottantic receiver in the costractor's term of compensation, particlarly when it was consistent with an increase in the costractor's contracts on their bisomers or any change in the institution above that is of specific types of except affects in the force charges in Government pulity. Composing of Superior that representatives chould increasely challenge interested over where major received of existing compensation plans or new plans are introduced by the contractor and the contractors.
- (4) Has not noticed the Leginzary WFO of the changes either before their implementation of within a 197 company period a territoria. Indometric poor, and
- 781 Has not provided the Government, either perfort implementation or within a reasonable period after it. At opportunity to review the reasonabless of the changes.
- in the contractor is business to each that its comper-tation, from a time and subject to the imposition that mucually occur in the conduct of computative business.
- (iii) The conduction incurs costs for compensation of excess of the amounts which are deductable under the Improbl Revenus Crafe and regulations issues under it.
- (в) Дары пригадения причиналь. По союз с<sup>2</sup> соноpersonium established under "arm/s length" (regonated latur management og reducids, die utherwise a norwide, die mosts are reasonable if, as applied to work in performing Gegennment contracts, thay use not determine the belleway. nimbed by the character and injormistances of the work or discriminatory against the Generoment. The application of the provisions of a labor-management agreement costerns. to apply to a given set of circumstances and conditions of employment leg, work involving extended hasables. acquisties no work dou requiring recommes use of evertimes is unwarranted when applied to a Concernment context; involving argonicately different could "stances and cordinons of employment (e.g., work involving loss baserdous activities at week comings tyringuiting use of evenime). It is discriminatory against the Government of it results in employee competention (in whatever tout or rame) in gavess of that being paid to: similar con-City contention work. ender companies elementaires, Disallowmen el Costa will real be made under this pringraph: (a) unless in-

- (1) The authoritor has been detunited an appear my to instity the desist and
- (2) Due consideration has been a senior observe induced conditions period by Government distribute to imposing busines, hardships, or hazares on the motive seleeltiployees, for which companies on that might obtained appear innecessible is required to adjact any hold necessary personnel.
- of Force of passman. (1) Compensation for pressuaservices includes compensation paid at to be hald in the future to be follower at the form of each composite securities, such as souds, bands, and other ting real instant colspre paragraph (d.12) or this cover-time regard of valuation, reported assets, products of survices.
- (2) When compensations is produced by securities of the companies in of an abbliste, the following additional new retions apply:
- (in Valuation placed on the victimes shall be the run market via do on the observation if date in under limited about the minutes of shares awarded is known) calculated upon the most policies in state awards.
- (i) Ascreads not the control set unit as \$60 fb = 0 mg/mg/mg/ contentions to the compleyees of the following to the providence that the smpth; reswift not receive the securities and the men in broad to the accreads with no forefailed.
- thy Dismested and Principal differential pair (1) behan personal services are performed in a cost of country u.o.s. permature may also include a differential that may properly tensibler all expenses associated with foreign employment such as bounded, cost of Principal dipartments, transportation britishes, with and Federal, Sizze, local or foreign indometrates resulting from foreign assignment, and other misted common
- (2) Differential allowances for rescriptual Federal. State, or Incal accome takes resolving from demonstrative assembles ments are total socialist.
- (i) Buttater and recease it comprised to 1.1 homotive comprehensive for menagement employers, such contact suggestion awards, wifing awards, and incomprehensive comprehensive have deep production, took reduction, or efficient performance are allowable growinged the awards, are paid or sourced under an agreement entered and in good faith between the contractor and the employees before the services are rendered or pursuant to an established plan or believe followed by the contractor of established plan or the field, an agreement to make such paying it and the basis for the award is supported.
- (2) When the horses and incentive competitation payments are determed, for costs are subject to the requirements of subparagraph [6](1) of this subsection and of paragraph (k) of this subsection.

34.203-6

- ign Selectors (as in (1) Severative pay, also commonly inferred in as distinguish wayes, is a judgment of addition to ingular salation and wayes by normacing to workers whose thickeyment is being involuntarily remanated. Payments for early retirement meets, so plats are covered in paragraph (j.e.?)
- (2) Severative pay halor allowable must meet the geteral allowability underly in supdivision (gir2) or this subsection, and depending upon a heither the severance is remail or almostial, criteria in subdivision (gir2) if (or abnormal severance pay also apply. In addition, paragraph, gir3) of the subsection applies of the severance cost to be foreign nationals couplinged by to girth English States.
- (i) Severance pay is allowable only to the extent that in ruch case into required by (A) bw; (b) employer amployed agreement of (i) evapolished points that constitutes to effect, at one educations of the particular constitutes to effect, at one educations of the particular comployment. Payments made in the extension conjunct with a replacement worth at the whope contributes as described under substantially optic length or setting is described under substantially optic conditions of employment, or one titled amployment; by the contraction at any nor fact my, subsolving, at filtration or parent company of the contractor are not severance pay and are unable wable.
- (iii) Addus, innortal temporal severation based on the current of anti-order to the worse performed in the current into partial severations of the method will be acceptable of the account of the account is reasonable in tight of payments solve by mage to toward severations of the account severations of the account severations of the account severations of the payments solve by mage too towards severations of the account severations are allocated to all, while performed in the corresponds plane.
- (iii) Abnorms or mass severance pay is of each a conjectural twore that measurement of costs by means of an archival will not achieve equity to both pain excitous, accrusists for this purpose are not a found a. However, the Government recognizes as obligation to participate to the extention as late where, in any specular payment. Thus, allowability will be considered on a case-by-cover hope.
- (3) Notwithstanding the reference to geographical strate in 31,205 (36)(1) under 10 C.S.C. 2324(e)(1)(55) and 41 U.S.C. 256(e)(1)(54), the costs of severance payments to foreign rationals employed under a service contract performed outside the United Scales are usallowable to the extent that such payments exceed amounts typically paid or employers providing similar services in the same industry in the United States, Further model 10 U.S.C. 2524(e)(1)(N) and 41 U.S.C. 254(r)(1)(N), a seen costs of severance payments, which are otherwise allowable are utallowable if the termination of employment of the foreign monal is the result of the closing of, or the custailment of

- authories at a United States for thy in that ecountry of the region of the government of that country, thus coes not above 1 the closing of a racinos of socialitations of activities of made pursuant to a states-of-force or rotter or antisylmocountry agreement country into with the government on that country before howermed 20, 1989, to 1981, a 2025 etc. a designed to 3.5. a 250 etc. primitive head on the agency, or designed, to water most cost allowability humanous undescribed or communities and 27.1. If and the socialities provided on a 50, 237.9.
- (b) Bankpay in a trackpay receding prior in Agricultural Foldered Agricultural form on the chart. Problem Agricultural Problem Agricultural Foldered Agricultural form on the chart will be tracked to the receding a confidence of the tracked Agricultural form on the Corollary Agricultural form to the Corollary Agricultural form the Corollary and the confidence of the top of the order of the agricultural agricultural form the confidence of the agricultural agricultural form the confidence of the Agricultural form the confidence of the Agricultural form the problem of the Agricultural form of the Agricultural form the Agricultural form to Agricultural form the Agricultural form the Agricultural form to Agricultural form the Agricultural form to Agricultural form the Agricultural form the Agricultural Foldered Information of Charlest Information 1964 to confidence of
- (2) Other fee Got Thompson that also result from payments for the city of an and nonmorphism for the city energy in their past and someoff wright trays for weaking without a contact in labor agreement dependation labor agreement dependation labors. Such backpay is allowed in laborations. Such backpay is allowed in laboration agreement neighbors in allowed pass. It is of the agreement neighbors is allowed to back it.
- (i) A formal agreement or innerstanding decisions between management and the employees concerning these payments, in
- (ii) An esiablished policy or position is also and is followed by the contractor without weight yet to might in affect, an egranting on more such payment.
- (i) Omigensation based on charges in the prices of corporate recurries on comparating equity points and a section working opening, stock appreciation togras, pharmed stock plans are principles spock conversions.
- (1) Any compensation which is re-culated, or valued, based on changes in the price of corporate securities is unallowable.
- (2) Any compessation represented by a viceral parameter or which is called lated based on the condition many is small condition.
- (3) If a constant pays an employee in her, of the employee setsiving in recreasing a right, dome-tie benefit which would have been unallowable under this paragraph 1 it, such payments are also one "twelle".

- iji Paralamistani (1) A pension plan is a deletical compensation of an ibat is established and maintained by our comine employers to provide systematically for paying benefits to plan participants after their retreament, possible that the benefits are paid for life or are tayable for life at the option of the respiryers. Additional benefits such as permanent, and total disability, and develop payments and survivorship payments to senerolizates of deceased employees may no incated as proxime costs, provided the benefits are an integral can of the bension of an and meet all the criticular postulating to persons casts.
- (2) Pension plans are normally suggregated most two types at plans, defined beseful or defined contribution pension plans. The rest of all CeF red hendlit pension plans shall be measured, all certified and amounted for in templiance with the productors of \$6.01 R. FMA.412. Composition and Measurement of Pension Cost, and \$6.018. FMC.413, Adjustment and Affordation of Pension Cost. The revision full defined contribution pension plans shall be measured at a citated, and accounted for in adequating the tree provisions of \$8.018. \$90.4.4.7. Pronsion that are allowable subject to the seferenced standards and the cost limitations and excitations are limits in subject so that the seferenced standards and the cost limitations and excitations are limits in subject so that the cost limitations and excitations are limits in subject to the cost limitations and excitations are limits in subject to the cost limitations and excitations are limitations and excitations are limitations and excitations.
- In Except for unfunded pension plans as defined in \$1,000, to be allowable in the current year, persion costs must be founded by the time set for 1 long of the Pederal income (as return or any exceptor thereof. Persion costs assigned to the current year, but not forded by the tax return time, shall not be allowable to any subsection year.
- I to Prinsion payments must be inconvented in amount and be paid pursuant to IA) an agreement entered that an agreement entered that an agreement entered that an agreement entered that the work of the established plan. The cost or changes in proximal plans, which use alwariactication to the Government or are not invended to be applied equisitionally for all employees under size, an organisations in the fourth we find Cook able.
- (iii) Except as provided for early retrement benefits in subparagraph (;(7) of this subsection one-time-only pension supplements not available to all grantsupants of the basic planary not also wable as pension costs unloss the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.
- (iii) Indicesses in payments to previously retired plan posteripants covering unstochlisting adjustments are allowable if paid in accordance with a policy or practice consistently followed.
- (2) Defined benefit pension plant. This subparagraph covers pension plant in which the benefits to be paid to the basis for determining alon benefits are established in advance and the contributions are intended to provide the

- state! Secolify. The cost il indatoms and cardinities pertaining to defined braceii place are as to-lows.
- tal(A) Except for undunded persion plack as defined in 34 GGT, normal costs of pension plans not funded in the year incurred, and all other composents of pension ravia (are 48 CFR 9904 412-40rall 10 assignable to the conremi accounting period but not funded during it, shall not be allowable in subsectient years (except that a payment made to a fund by the time set for filling the Federal income (as rejum or any extension thereof is considered to have been made during such taxable year). However, any part of a proviou cost that is composed for a cost accounting period that is defented pursuant to a waiver grained under the gra-Visions of the Employee's Retermine Japane Security Act. of 1974 (ERUSA) (see 48 CFR 9904.112 50(c)(7)), will be a lowable in those future appointing periods in which the funding &6x occur. The allowability of these defended corurbations will be limited to the amounts that would have beet allowed had the fording accurred to the year the costs would have been assigned except for the waiver
- (31 Allowable costs for virtuality pension plans, as defined in 01.001, are united to the amount computed in accordance w.c., 48 CSR 9904.403 and 48 CSR 9904.413
- (ii) Any amount paid or funced before the time is becomes assignable and allowable shall be applied to future years, in under of time, so if secondly past and deduct Me in those years. The roomest earned on such premators faciling, based on the valuation (are of return, may be excluded from ruture years) computations of pension, costs to accordance with 48 CFR 9864 412-59(a)(7).
- fiii) Increased person costs traused by only in finding beyond 30 days after each quarter of the year to which they are assignable are unallowable. If a costnosite rate is used for allocating persons does between the segments of a congary and if because of differences in the finding by the segments, an inequity cases, aboveble person costs for each segment will be limited to that periodial segment's calculation of person rous as provided for in 48 CFR 9984 413-30(c)(5). Determination of unallocable does shall be made in accordance with the actuarial method used in calculating pension costs.
- (iv) Allowability of the rest of independing the Prinsion Benefit Guaranty Corporation (PRGC) under ERISA Section 4062 or 4064 prising from temperating an employee deferred compensation plan will be temperating an employee deferred compensation plan will be temperating an employee deferred compensation plan will be temperation was required by the PBGC under ERISA Section 4025, towards obtained and the informational payment is not recover able toward the increase Consideration under the factory and applicating the extension which the information payment is allocable to Government work If a pereficial or other equa-

(FAC 97-02) 31-17

#### FAC 97-02 OCTOBER 10, 1997

PEDSIDATIANTOUSITION REGULATION

JL285-6

inher relationship exists, the Consentment will purceipale, take the proposements of \$1,265, .90 (5) and for, in the independ Scauen payment to the extent of its fact sheer.

- (v) Increased person roots resulting from the windrawal of secret from a pension fond and translet to another employee benefit plan fund use lost owable ramps to the corpor archive(ted by an advance agreement. The advance agreement shall.)
- (A) State the amount of the Government's equitable share in the grown seasont woodrawm and
- (B) Provide and the Government receive a credit equal to the semant of the Government's expectable share of the gross worldrawal. If a transfer is made without such an agreement, paragraph (j)(4) of this subsection will apply to the consistence of constructive withcrawal and receipt of the funds by the constants.
- 14) Terrotomor of defined benefit person plant. When expect at surplus assets invent to the contractor as a result of termination of a deliced benefit person plant of such access are constructively received by it for any crossor, the contractor data make a refund or given a could to the Government for the equivable share of the given amount withdraw. The Constitution of plantation in pendion costs through those contracts for which test of practice data (or 15,403-4) have contracted for which test of practice data (or 15,403-4) have submitted or which test of practice data (or 15,403-4) have submitted or which are subject to Supper 51.2.
- (5) Defined contribution person plans. This secparagraph covers those pension plans in which the innochations to be made are evaluated in advance and the level of tenerity a determined by the contributions made it also covers profit sharing, sovings plans, and other such plans provided the plans fall within the definition of a poinsion plan in subparationh (i)) if of this subsection.
- (i) The pension cost assignable to a dest accounting period is the net accountable on recurred to be insule for that period after taking (the audeum discovers and other credits, where applicable, Bowerer may guitton of pension cost complete for a cost accounting period that it defended pursuant to a waiver granted under the browns only of FRISA (see AS CER SSBALATE 5000/30) will be allowable to these future accounting periods when the funding does occur. The allowability of three defende confitting will be fundation the amounts that which have been allowed the funding does not the funding have made in the year the costs would have been assigned except to the experi
- (a) Any absount paid or funded to the insulfering the time it, province was graphed and althought shall be applied to luture years, in pade of time, as if subtailly parallel deductible in such years.
- (i...) The provisions of subdivision (1/2), wild this signature concerning payments to PEGC apply to defined contraction plans.

- (b) Persign plant along day as you you member[Reversed]
- (1) Enrichment occasive plant. An early confiment iscentive plant is a plant under Albeit employees receive a trains to incentive, over and above the receive ment of the basic persons plant to retire early. These plans normally are not expensely and personnant or the basic plant and do not represent the income scripments, and as east would not gratify as personn costs. Sowever, for contract inviting purposes, early restriction in only on payments are allow able solyest in the pension less contents contained to subdivisions (0)(5)(6) curough (by) provided—
- (.) The most are accounted for and allocated in secondariae with the congressor's system of accoming for pension costs:
- (iii) The payments are made in accordance 4 or the terms and conditions or the contractor's plant
- (in) The plan is applied only to active employers. The cost of extending the plan to employers who taked on were terminated herbite the adoption of the trian is unacknowledged.
- (iii) The total of the internove payments to any couplayer may not exceed the amount of the employed a second salary for the previous fixed year become the employer verticement.
- (b) Employee mark ownership plant: £56.9 (c) An ESOP is as individual stock body plant designed specifically in meeting the stock of the employer corporation. The compactor's goald buttons to an Employer Sweet Ownership Trial (£501) may be or the form of cash stock, or properly Costs of ESOP's are allowable subject to the following conditions:
- (A) Constitutions by the contractor in any are your day not exceed 15 yearsh (25 percent when a maney purchase plan is included (of salaries and wayes of employess personalizing in the plan in any personalizing year
- (a) The contribution rate (ratio of coordination to extinite and wages of participating ampliopees) may not exceed the tast approved contribution rate except when approved by the contracting officer pascillagum justification provided by the contracting When no contribution was made in the previous year for an resisting ESOP or when a new ESOP is fest established, and the contractor proposes to make a contribution in the current year, the contribution rate shall be subject to the contracting officer a approval.
- (C) When a plan of agreement exists wherein the fratelity for the contribution can be compelled for a specific year, the expense asymmetric with that liability is assignable only to that bened. Any person of the contribution, not further by the time ser for Bing of the Fadoral Income to return for that year or any colonism thereof shall not be allowed in in subsequent years.

- (fig. When a plan in agreement exists wherein the hap, by for the contribution contribute accordingly, the amount accordingly for any year is assignable to that year provided the amount is harded by the other set for filling of the Federal mesma has return for that year.
- "La Wages the excitational as in the form of stock, the value of the spick contribution shall be intuited to the far market value of the speck up that other all title is offers only translational to the trust.

Cash conditioning wall be 2,04 able only when the conquality runnishes evidence satisfactory to the correcting officer compositions may sook purchases by the PSOT are or will be at a lan market price; e.g., poskins arran nevents with the trace permutting the contracting employs in estation purchases of rice a by the court to determine that prices pool are at tax marker value. When it closely opened are paid, the around of the excess will be engined to the same induced cost goods that were uturged for the ESOP contributions in the year prochabilitie stock trachese occurs. However, when the trust purchases the street with borrowed funds which will be repaid over a period of years by wash contributions from the contractor to the grow the more or price so to lain Harker value shall be aree to the dynamics a cost pools for rate from the period of years during which has antificient contributes the each world by the business repay the extra When the fair market has in of unissued stock of stock of a closes, held perperation is not readily determinable, the Valnation will be able on a care byserve basis taking into consideration the guidennes for valuation used by the IRS.

- Annuals contactured to an ESOP priving from either
- (A) An adoptional investment (a) fredit (see 1975 Tax Reilauton) Aci. (TRASOPto),  $\sigma$
- (B) A payrout-based on credit over Freedoms. Recovery The Association is the line positive.
- this The requirements of surcession (diff) if if this subsection are applicable to Purployee Stock Ownership Plans
- (c) Defended comparations of Theoretic consequences in an award given to us employed in comparation an exployed in a from rowl accounting period or periods for services tendened in our or more doct according periods before the date of receipt of comprehensity the simployed. Defends, according to a sum as most reliable the unique of year and services for somewhaten does not reliable the unique of year and services for sum as but are paid within a reasonable period or time after the ordinal desired are considerable. Subject to \$1,200 from the awards are allowable when they are based on content to the period when the work being removement was genterfield and out a lower the work being removemental was genterfield and out a lower the work being removemental was genterfield and out a lower the work being removemental was genterfield and out a lower the work being removemental was genterfield and out a lower the work being removemental was genterfield and out a lower than the work of the content of the content of the content of the series of the work of the content of the con
- (2) The crists of defected awards shall be included affinemed, and accounted for its compliance with the provi-

- sions of 48 CPR 9904-415. Accounting for the Charles Defented Companyation
- (a) Defence compensation payments to endouses under awards made before the effective start of 43 CTR 9904-415 are allowable to the extensionly would have seen allowable under prior accession regulations.
- (4) Congression in alcohold to home consumer (8): The following posts are true consider.
- (1) Paymenty to employers one or agreements to which they receive special compensation, it excess of the contraction's regularize a use per product, it from coupleyment type corrected following a couple of the chart attorn action brought concentration, the contraction in a constant of postum of dylar eds.
- (7) Payments to ellipsoyees orget plate ministration generation with a change to hellier actual or proportion of the control for or a substitute portion of the control for or a substitute portion of the control modesyees receive special employment who it is contingent upon the enth core remaining with the can tak to both specified point of the control for a specified point of the control for the control for a specified point of the control for a speci
- and Strong broofing of the rest better to the account and services provided by the restricted to the surplayers as competing of my dimention regular sought and south S. Burge benefits reflice, but set in throated to the cost of continuous work leave, the costs, initiary brave, employed inversarily, and supplemental that picy many brave for place inversarily, and supplemental that picy many brave for place inversarily, and supplemental that picy many brave for place inversarily as provided other owner in Supplement that the cost of the continuous and that are required by the incontinuous experiment or an established policy of the continuous
- (7) Thus postors of the cost of compare-four size accomplished not related to personal use by interlogens findlyding consportations to and four which is until owner to gardless of whether regardless of whether the confidence in the employees one of \$1.2050(401).
- In Employer orbits and prochast decome poors. Rehips and produce discounts in whom or some gundred to sniployers on products or services created by the contractor or software services. Low Like
- for Posterior on bringin make their posterior (PPP) (1) PRE covers at therefor other than each benefits and for insurance benefits paid by person plans, posselled to employers then benefit earness and pover of dependents design the princip balls—and the employers (principally Benefits exponitioned include, but not not hunter to extremine the balls care, the insurance provided in some personal and other welfare benefits such as minute assistance, due and other welfare benefits such as minute assistance, due after, eggl equipment and huntime subsulted provinced after 40 edges.
- (7) To be althouble, PRD made made be reasonable and receive pursuant to law, employmentally as agree ment, or an exablished jet experted contraction to addition.

## 31,205.7

## FEDERAL ACQUISITION REPORT ANYON.

5. Fr APNAZCIO, PRB costy must also be culculated in accornce with paragraphs it of Continuity or mit of this section.

- (i) Cook twice. Cost incorporated as period to when they are accounty provided, thus be said to an invuide, provided, to other reducent the sument year homeful in graminums.
- (iii) Permitted fundings. If a contraction exercise terminal lended plant of chest for around PRR costs during the working lives of employees, Instead, it accrues and pass the enter PRB liability to an instance on proceeding a compact, appearing the termination of employees for contractive to such a terminal funded plant to establish and cumulative funding or reserve for the such purpose of providing PRR or terminal. The lump sum in allowable of anion sections:
- Into Automationary, Appear covering agreement for the method fronting make be measured and average at all along to Generally Accessed Automating Principles and the pand of introduced to stabilish and maintain a functor exercise for the softe purpose of providing PRIS to returned The account that also be estimated in accounting upon generally accompand and principles, and produces approximated by the Accountal Standards Broad
- (3) To be allowable costs upon be forecodity the time set for filling the Poperal income can return or earl extension, thereof. PRIS costs, assigned to the corner! year, but we ided or otherwise liquidates by the return time, shall not be allowable in any subsequent year.
- (4) Increased PRB costs payed by delay in Sowing beyond 30 days after each quarter of the year to which they are assignable are an allowable.
- (3) Costs of posteriorement benefits in speciation (a)/2 (iii) of this subsection attributable to past service (first) that obligation? as delined it Francial Automating Standards Standard Submania 105, paragraph 1 for an allowable subject to the forcetting impactor. The allowable amount of such costs assignable to a contact of first lyest calmid exceed the import of such costs which was a high war 1) be assigned to the contact of such costs and year lander the delayed ecophicate methodology described in principality 112 and 213 of Statement for
- (6) The Government shall need we an equitable state of any amount of previously facility PRB coats which revers as increase the command. Noth equipment share shall reflect the Government's previously paperparent in FRB coats transplit those entitles to which use field cost or prompt data were required or which which use the open at \$1.2.
- (p) Distributed of allowabilities of proliperocities for contrast contrast or provinced (1) bits contrast awarded during flow your 1997 costs incomes from October 1, 1995, through September 30, 1997, the compensation of an Item of a series of Cahase 1907 costs on the extension.

\$150,000 per year are unallowable. So, the 50% of Public Law, 64 2010.

- 121 As used in this purigraph
  - (c) "Compensation" greatis--
- (A) The total amount of proper wages can be the doubleyer for the properties, plus
- (D) The total amount of electric patents governors along the company of many year denses and
- viol 10 fform in a sensor management personal means—
- (A) The condense of Cher Live, above Obliged (CPO) or any included acting in Live can expense.
- (B) The unification's from moneyheld compensated officers in some management positions offer than the CEO, and
- (2) If the station on kingunger one, a subdisional rate intermed six home on cashand a segment the five most dightly compensated understands in service in a systematic products at each work intermediate has election matter segment.

## 31.205-7 Contingencies.

- (a) "Fundingmary, his base in this subject. I cause prestitle future execution and documents from presently thrown or unknown causes, the subject of a first is independing the at the present time.
- (b) Costs tot Cost ignories are generally analygogable to instancial costing proposes because such costing decay with costs incurred and recorded on the contraction's looses. Brokever, in some cases us for example, with respect against a contingency further may be recognized when this applicabile to a past benedite give recognized when the owner and factors is De interest of reporting small means.
- to the connection with estimates of fature costs, continues names fall into two coercines.
- 1.4 Those that may once from providity known and existing conditions, the effects of which the exemple within reasonable limits of accounts to a finite provide and defective many. Contingence of this company are other collaboration the resimple on future costs so as to provide the best exempted or performance and:
- 12) Prose that this cover from present a known or monown resultions, the effect of which turned by messace so proceeds as to provide equitable results to the contractor and to the Government and results of penaltry litigation. Contingenous soft this computes are to the two confirmings to monoty the coveral term of post, but should be disclosed separate some conglite tasks upon which the contractory is computed) to further the region man on appropriate potential coverage (See, for example 17-203-199, 17-303-19, and 21-205-14-1

#### PART OF CONTRACT COST PRINCIPLES AND PROCEDURES

## 31 205-8 Contributions or donations.

Contributions of dimitators including of a process and stryings, regarded of prejugations and lowable investor products and 2005 (2005).

#### 31,205.9 [Reserved]

## 31,205-10 Ocat of money-

- (a) Formular cannot that all momes. It to be each to be appround to continue to the appropriate of a continue to the appropriate to the appropriate of a continue to the appropriate appropriate to the appropriate to all contractions are so that its continue to the appropriate to all contractions are so that its contraction and contractions are appropriate to the appropriat
- right to 1, the 1994-414. Cook in Morein as an Plement of the Cook of Facilities Cap off, established chocks for megaging affecting as in element at a phasticus decrease of tax facilities. Cook of indices facilities are exchanged in Form CAAB-CME, backet what is so defined poor at the business one using
  - (A) Businessount facilities capital date
  - (B) Giverhead a location base data, and
- (i) The cost-of-many rate, which is based on material cases specified by the bearings of the Treasity under Public Log 92-4.
- (2) All withins Whether or not the contract is extensive subject to CAS facilities capital associal money is accessive if
- (1) The contractor's explaint recomment is measured, a occied to contracts, and conted to accomment with 43 (778 Page 414).
- ). The configurations added to exceed in deposits a complete and the first standard  ${\cal A}_{\rm c}$
- the estimated stellings to proposed in cost of money a specifically identified or proposed in cost poliphysis tellily to the contract under other dust gas to be a aimed and.
- 1937. The recoverments of \$1,205-79, which limit the allowability of facilities and fall cost of money, are power to
- (3) Associating. The facilities control cost of money ages might emporal on the control to be (exclusive teacher). However, the controller shall
  - Jir. Make a memoraphlum only 50076 bist, and
- (ii) Memoratic in a manner that permos make now verification will relevant schedules, condidate, and other data necessary to support the entry U. by
  - (4) Perovect Build Coverput, cost of morey fromis-

- (i) . Althoughly under subparagraph ( ), and his subsection, and
- (ii) Called ated, it has ated and independent in accordance with this cost principle should be in functional roof. For reoriginsment purposes, under some case reinfoldsement of Costs and Improvious paying Countries and tempolasement confuncts and Improvious paying Countries.
- (5) The covered money resulting from belonger asset valuations resulting from the few complications is the facilities capital employed base to multiwaster see \$1.205.52.
- 10) Cost of the resistant enematics for related to the second of the second costs and the cost of the
- (a) 24 CSR 9904-413. Cost introduces as an Figurest of the Cost of Capital Assets Under Cost-inchen establishes except for measuring and 30 equipg, as an offment of contract cost, the cost of equipal communed to capital assets under construction. Education of development.
- (2) Analogous (1) Whether of the discontinuous eitherwise subset to CA's, and except a coefficient respectivition and of CA's section, the cost of mining for central assets and reconstruction, rehouseons on development is allowable in
- (A) The distrol flower is calculated, allocated to use metric and proved in generating with 45 CFR 890 (117)
- (B) The companion in probability records to demonstrate compliance with this standard.
- (c) The case of money for suggests considerable in model of the capitalize beast and provides the least the although expectation of the original to case of computer capital exerts their resolutions are used code, the capital processors for which are our norm code, or allowable, and
- (D) The requirements of (1.205.51) which limit on allowable y of cost of namely the capital assets ander consuming the capital conservation.
- (ii) Actual interest cost in Lee of the colored imputed cost of marray for a quital asset cander construction. Jubecency, of development is a full owner.
- (A) An existing. The cost of mores not capital assets under a castraction read not be entered in the Contractor's back cofficient and "Rownsen are not cost in shall 1," rake a nigreographism runs of the cost and timing a nigre of more and an incomparison.

31/01

31,205-11

FEDERAL AUQUISITION RESULTATION

ner that permits body and reichbation, all relevant schedrles, bust data, and other data managing to support the many falls.

(4) Pasment. The cost of money for capital acters under construction that is allowable under subparagraph (1) above of this acts principle shall be or in control and for identificational purposes under applicable cost-combuse ment extraors and for progress payment outpoxes under fixed price constrains.

## 31.205-L1 Depreciation.

(a) Expres attent is a charge to current operations which clearities the cost of a targible expectational, less reconstructed establishment, over the estimated profit life of the asset of a systematic and force manner. It does not involve a practice of the entire to the prospection period of elementar usefulness in a particular continuous expectations as the appointment. From physical life, in its existence by the service of countries. It is retrieved and explanation of the entire terminal and explanation practice of the contract.

- (b) Contractions having contacts only on to 45 (FR 9994-409) Engineering of Tang die Capite Arceis, must adapted on to promotion in Tang die Capite Arceis, must adapted on to promotion of the standard on a Hally CAS covered cortracts and may elect to adopt the standard treatlight cable of the client on its mode, and its requiremental operation any conflicting requirements of this destipation, the standard of the CFR 9904-209 for all contracts, contractors must continue to 650-36 it mad acceptance of all defluction of final acceptance of all defluction of the decomposition of final acceptance of all defluctions. Paragraphy (c) through (e) below apply to Londard to which 45 CFR 9904-409 is not applyed.
- (a) Normal depreciation on a congener's plant, equipment, and other cap of facilities is an allowable contract cost if the contractor to able to demonstrate that it is reasonable and allocable this senganguage (i) of this segum.
- (d) Department on the considered reasonable of the remarks in follows policies and procedures that are
- (1) Consisters with those routowed on the same dest center for husiness other than Government.
- $(\Omega)$  Reflected in the contractor  $\kappa$  books of accounts and financial statements and
- (ii) Hoth used and acceptable for Federal manine tax purphysis
- ten When the expunsionin reflection on a controller's books of acondition of financial scalements filters from that used and acceptable for becenf into the tax purposes restrictions shall be based on the asset tool who titled one the estimated world. Title of the property using depreciation unrisingly becomes the source to the controller's property of the property

provided shall be determined in a matter consistent with the depreciation pointers and propositions followed us, the Same and control up for Government business above participation of Consubstitutions.

- (f) Deposits on for combinesment party sever the case of positivities organizations shall be determined on the back described in program or just this specific.
- rg) Special considerances are required to assert acquired before the effective date of this own principle in, on that date, the undependence boonde of these assert resultant that date, the undependence boonde of these assert resultant that dependence or these assert resultant that dependence are the special so different than the undependence and be acceptances to different along ments. The undependence to the feather and forement of our expensional testing the contraction of the section of the section of the section of any assert affects the effective date of this of 30%. I stall not expend the constraint of the properties of the section of allowed on all others on regulations.
- On Dirpresi align deviled prior by the allocated to the point open and other work as call matters cost. The appears of depretative allowers in any actioning people may as most onto other basis objections in paragraph and choice waity with column of productions in own of multipher appropriate.
- To In the case of emergency feetilities covered by certain cases of necessity a continuation may ment to use resemble perceived on which incorporating a determination of flow occreation. To may elect to use either annual or three depositional after a determination of flow depositional after a determination of flow deposition. Pays been made by an immergency Hachties Depositional Bostol (HFDH). The method elected must be follower consistently introduced to use mortal deposition, the internation prographs (n), (n), (n), (n), (n) the off of the section shall apply to both the emergency section and the positional books period. When an exition is could to use flow deposition and the minimum allowable as depositions.
- It with tespent in the emergency period of corrections shall be computed in accompanie with the exemption of the ELDB and allocated tateably over the full time year emergency period provided to other allocated is made which with a deplicate the fronty such as conferentiary obsolescence, covered by the Brand's determination, and
- (7) After the less of one company period, shall be compared by a scribbane the remaining undepreciated por the off the extra the coverage by Leiler (uses the balance of its solution of the provided the remaining undepreciate) extraord at Cock covershall set must be university of the economical Characteristics."
- (i) No depreciation, roma, no assistance shall be allowed on property adjunct 20 no cost from the

Generalized by the distribution of by key the source subsidiary or affiliate of the contractor accordangement on ad-

- (a) The depolaration on any term which meets the critiria for allowance of a "priori" maker 27.705-70cc) may be based on that three, provided the same policies and providcures are used for desting all business at the using disclosing since draps, or organización maker communicación.
- (I) No depreciation or remail shall be autowed on property fully disposalized by the contractor on live 41, 45.8.6... subsoftery, or affiliate of the contractor under remaining out tol. However, it reasonable inheren for or no fully depreciate I property day he speed upon and allowed that see 31.1050 h 20. In determining the charge, remaiderables shall be given to that into estimated distributions of negativitients, effect of any inconventionalizations of agent decreased efficiency due to age, and the animum of depression processes. Outget to Government contracts of substitutions.
- rmi 48 US-R 19904.404. Cathalication of Tangin's Assets, applies to proets acquired by a "capital lease" as: defined in Statement of Pinancial Acont rong Standard Six 13 (FAB-13). Accounting for Lessey, (scood by the Financial) Account on StaryUnity Broad (FASB). Compliance with 48. CTR 9904-0-1 and FAS 10 requires that spen Inventionary (unpital leaves) he treated us purchased assets, i.e., be capit tal god land, the capitalized value of work leavesty be distributed inventibilit useful lives at depreciation that gry lim ever the beyond falle as automittation charges as appropriate Assets whose looses are classified as inputal leates under EAS 1) are settled, in the requirements of 34 205 (I while seers adminent maker travers plass find as operatory leases. are subject to the requirements on rental costs in 31,005.35. The standards of fluancial accounting and recoming presonhed by FAS-13 are promporated into this principle and shall govern its application, except as provided in subparts. graphs (1), (2), and (2) of this paragraph.
- (1) Re-tail costs under a sale and Teasehack attangement shall be allowable up to sho amount that works have been allowed had the contractor related sale to the property.
- (2) Capital leases, as defined in FAS-15, for all real and personal peoperty, between any tested parties are subject to the requirements of this subgroupgraph 21 205-11(m). If it is determined that the fetting of the lease have been arguedated, depreciation charges shall not be above and lesson are related, depreciation charges shall not be above in excess of those which would have executed if the lease contained terms consistent with diese found in a lease between unprelated parties.
- (3) Assets acquired under leases that the contractor must capitalize under FAS 13 shall not be treated as purchased assets for curricult purposes it the leases are covered by 31 205-36(Fix4).

- the Whether or and the containt is otherwise subject to CAS, the requirements of \$1,705.50 which must the allowability of determination shall be onlessed.
- for the believed of a winterdown Language, by value to fair value as a result of imparaments encourses execute in charges in circumstances, allowable depreciation of the imparamet assets shall be floated to the assets that would have been a four block has the assets not been a round down as as \$1.205-1056. However, it is does not preclude a charge in depreciation resulting to a faller course such is perfuted by charges in estimates of service. So, imposing our or such states of readon, sales.

## \$1,205-12. Franchise planning costs.

- for This category includes costs of center that only cargo menagement is mining that its accordingly with the future exert cover operator of the contractor is business and that may take into account the exemption possible to of earliest or disligatings, or fundamental inference of the committees in which the contractor currently does business. Frances a particular costs do not a challe of earliest of or recognitional costs of contractor currently.
- to: beginning planting cases and a low, the asterdays costs to be properly allocated.
- to i Research and development and any seming look is designed in lead to new conducts for safe to the central point in the unit of the DNe made this principle.

## 51.205-12 Employee morale, health, molfare, food survive, and domainry costs and credits.

- (a) Appretate towns interred on activities showing to improve working conditions, employed employed relations, replayer minute and couplayer performance dessimate the analysis performance dessimate the native paragraphs (by its and (i)) of its subsection. Some complex of allowable activities are bosse paragraphs, beath clinics, wellness/finess or new maphases accounted and and commercy services, which include appearing of the short based to externize or ing rooms contents, until made any touches the contractions of services and the agency services are continued accommodations of similar types of services for the contraction's employees at or near the contractors facilities.
- (b) Corregigife are unallowable. (Gitts concentrated and dispersion performance made pursuant to 3, 205-9%, or awards made is recognition of applicate achievements pursuant to an established continuous plat or policy.)
- (c) Costs of recognish are unallowable except for the useds of employees participation in company sponsy and appears trained or employee organizations designed to improve company toyality, from working physical littless.
- (if) Theory from operating food and committy services may be probabled as made only of the conductor's objective is to operate such services on a binative on black. I JOSES sto-

31.22

botto because food services of lodging accommodations infurranted without charge on all practs or rates which concusts whate not be confined with the arrange of comments. the above adjective one notes towards. A lack may be allowed, however, to the extent that the contractor can Construction that implicitly a reconstructed less in  $\mathcal{L}_{k,k}$  , where Six companion must provide tudo en dontribus, services atarmoto, octions where adequate commercial facilities are not reasonably available for where charged but improduc-1.98 (above costs would be expressed but for the corporaand decise when resembning registron or food in cormi-Dieg apondaris vijli nor riherwije sield ner dast szamest with this even with ellicitett management, operate with your MOON OF A treatment businessed from the charge y store table high wises or proven in raise higher than this: charged by commencial establishments offering the same services in the same grographical great. Costs of food and diamos by services shall include an allocable share of increprise provey perisoning to the less charities

31 205/64

to. When the contractor has an angenical and one by an employee association to provide or operate a second, such as remaining machines or the operations plant and detail, the possibly continuous will be returned in the operation manufactural if the operation were providing the service (but see paragraph of) of this websection.

of) Contributions by the contractor to an employee organization, including hands that theirding machine receives or amiliar sources, may be included as costs manned conferences (a) of this subsection only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the implayed paganization weeks be allowed in directly incurred by the contractor.

### 31-205-L# Engertalnment costs.

Costs of amisement, diversions and all activities, and any directly associated costs such as neckets or closes or specific executs mosts locating, armods, transportation and guitables are modificable. Costs mate specifically under the control of the cost principle are not allowable under any other cretiparities. Costs of membership in social covering, or country clubs or other arganizations caving the same purposes are also unallowable, regardless of whether the cost is reported as taxable uncover in the employees.

### 31.705-15 Fints, penalties, and tolethorging costs.

(a) Conto of thest and penalties resulting from violations of, or failure of the contractor to comply with, Fridmal State, local for foreign laws and regulations are unallowable except when incorrect as a result of compliance with specific terms and conditions of the contract of written instructions from the contracting officer.

(b) Costs incurred in connection with, or related to the isoharging of costs on Government contracts are unallow. addression the rows and educate by on the cold forms a tendent of discussion of reported, or other take its improper charging metropolities of colds. Such colds include cases record to massive or otherwise determine the majorante of the improved charge in, and costs increased to remedy in correct to the Cookington such as costs in resource and reconstructions of

## 31.205-16 Gains and leases on desposition or impairment of depreciable property of other capital assets.

(2) Oders and bosses than the sale retinement, or goner disposition (but see §1.70%-19) of depending opposition shall be mutually in the year in which they decar all credits to coopes to the row groupost of which the depocation of attentions applicable of these assets —us on talls then see paragraph (d) or this subsection? However, no gening two loss shall be recognized at a result of one transfer or years in a hundren combination, see §1.70, §2).

Or Gains and history in depression of grights capital cosets, malicular princer acquired under capital leaves size 3, 203-1 mile, she in providenced as adjustments of depressional cosets previously reorganized. The yam is less for rach a recitalistic of the historical between the anamous treatment to the understand of subspectated historic Thrigain decignosed to conduct instead proposes shall be limited to the difference between the conduct instead proposes shall be limited to the difference between the composer shall be limited to the difference between the composer shall be limited to the difference of the recipies and of the oscer and as undepreciated but and except see subspecies of 12021 (1.5) (1.5) (1.5) (1.5).

(2) Special considerations apply to an involutiony conretaining which secures where to contearton's progeny is distributed by exents over which the owner has no empresion in fire, wherevery. Could, and containing the contear and an insurance award is recovered. The following government union conversions.

(1) When there is a cash award and the converted aviet is not no abed, gain or loss shall be recognized in the period of disposition. The gain recognized for distinct costing purposes shall be littled to the difference between the acquisition dost of the esset and its underprecised full states.

(2) When the converted asset is replaced, the contractor shall either—

 (i) Adjust the depreciable basis of the new asset by the amount of the total realized gain or they for

(iii) Reported the pain on loss to the period of disposition on which case the Government shall participate to the same extentials both hed no subparagraph (c)(1) of this subsection.

(d) Galts and losses on the disposition of depreciable property shall not be recognized as a security charge or credit when

- (i) Guars and bases are proceed through the Apple citizen receive agreement and netterful on the depreciation allowable under 30 205. Their
- (3) If a property is excludinged as period the gundries prior of a similar item, and the guard or have staken into consulgration in the expressionant work book of the position.
- (e) Gg is any those order of from make a extraordinary value, represents, or other disposition other than through linearese combinations shall be considered on a case by garabase.
- (f) Come and covers of any nature arrang from the sale or exchange of capital assets other than disperiodde property shall be excluded in uninpoint contract costs.
- ign With proper to hanglived to gibb and obt the PL, many tooless held for our no box shall be allowed to a water occasion comments as so to fair value as a result of organization accounted by coefficient of changes in distinguishments about the coefficient of the property and to the coefficient of declaring transfers after the H. September 1 for the other two tall assets have been on the counter from any appropriate to the calculation of the transfer of the coefficient of the december of the coefficient of the coefficie

## 31.205-17. Idle facilities and idle exportly costs.

the "Silves of alle facel ties on to elegatery" as used in this subset of means costs such as the remarket record, housing, remised of semiclated costs, a conjugatery track, insurance, and deprecution.

"Fee, three "has used in this online, can obe any plant of any particle three distributions that integral no the operations requirement, many affaulty or collectively or any other largeble capital axis, whenever located and whether owned on Rased by the contractor.

"fille capacity," as used in this subsection, means the inniced capacity of partially used fail loss to its modifference between that which a tacallors of authorse area. The percent operating time on a one-so, it basis, has operating intercapations resulting from much loss for injurish actipations and other normal onlays, modifications make also and other normal onlays, modific comparts studied the healths was actually used in morn comparts studied in a measuring the automatic period. A medic exhibit basis has be used in the relabilitation instead in a measuring taxis of the new tops in the number of study could normally be expected for the type of facility instruction.

"follo facilities," as excellent this subsection, means completely united facilities that the excess to the commeter's current needs.

- (a). The costs on official distribution and wealths unless that the satisfies  $\boldsymbol{\omega}$ 
  - (1) Are necessary to meet clocumous, a work out or
- (2) Were received when acquired and are new fille beganer of changes or requirements, product on couremies.

reorganization, termination, criticologistics which middent have been recontably note west. (Closes of fullified interiors allowable for a seasonable period continuity not to exceed thyrur, depending upon the initious taken to use these to dispose of the idle recitions that so  $\lambda = 205,42\%$ 

For Control of the options are costs on doing restricts on the motional fluctuations of usage of excellent error from period to period. Such nodes are althoughtened wide the capacity is repressing in way or groundy reconcillation is not subject to reduce on or elitional only subjecting a triguous subject to reduce on or elitional only subjecting a triguous subject in reduce with sound business, countries to seem a peachage with sound business, countries to seem a peachage. Widespread title capatity committee or entire place to anxiong a primp of assets having substantially the same function may be Ofer Scotlines.

(d) Any closs to be paid directly by the conserminant for after authors on alle explicitly reserved for Ediense to be houting production, shall the tipe subject of a separate agreement.

## Independent research and development and hit and proposal costs.

Jan Definicans

"Applied research" as used in this subsection, tocans that effect which (I), it could by fullows have inserted but may not be severable from the reload basic research. (I) attempts to determine and explicit the geternal of soleroid discoverage or improvements in technology. Praterials, processes, methods devices, or rechniques, and (by attempts to advance the major of the for "Applied research does not must be deviced whose principal aim is besign, development in test of specific atoms to services to be considered for sales this or from are within the definition of the term "development" defines or this subsection.

"Besic research" at used in this subserior incurs that research which is directed reward increase of the while is successful toward increase of the while is no foliar equivalent to a foliar equivalent to a subserior shall of the laterest under successful that any present application occurs."

"Hid and proposal (18.6)" chois, it is used in the cookertion, treaths the costs incurred in proposing, soom tring, and supporting body and proposals twingher of notice cline? On proposal Covernment of non-Government contract. The term does not include the cover of offset spinosaled by a grant of coporative agreement, or required in the perfecmance of a contract.

"Company" as used in this spoken on, means all discisions, subsidiaries, and all dates of the convector tradition formula and of

"Chargegor, included in pregraph (a,/C) at this subset (i.e., includes a lid, oppose, som diabos, and affiliates under a recommissants).

"filtrened are tract." As used in paragraph (4.07) of this subsertions, minutes a prime contract expected three by a

PEDERAL ACQUISITION RESERVATION

31.205-LH

Government appropriate an amount more than \$100,000, indeed for a blood once contract without cost indeed, see the also includes a subunifical for an amount more than \$103,000, except for a fixed-prior subspecies twithout end executives under such a prime contract.

"Covered segment," as used in paragraph (c)(2) of this substerior, means a modern of a sign of the contractor that allocated more than \$1,000,000 in IRAEDB&P costs to covered contracts. Curring the percenting focus? year. In the case of a contractor that has no product divisions, such priming with incommon as a whole. A product division of the contractor than allocated less than \$1,000,000 in IRAEDB&P costs to covered contracts during the proceeding total year shall not be subject to the 1% termine to major costs action set to thin 37, 765 (\$16.50.20%) in and 5.1.

"Development," as used or this subsection, means the systematic rise, under whatever name, of scientific and forthitral knowledge in the desert development texture evaluation of a potential new position in version for old at improvement in at existing position in version for the prepared of menting opening performing requirements or objectives. Development includes the functions of devicting means on, principle out, and lengtheering testing. Development evaluates

- (1) Subcontracted technical effect which is for the sole purpose of developing on additional source for or recong product, in
- (i) Development refer for manufactioning or production materials, systems, processes, methods, equipment, tools, and techniques not interced for sale.

Theopendent research and development (IR&D), " as used to this subsection, means a contact of R&D and that contacts of peoples \$40 ag within the four following armost (1) basic research, (2) applied research, (3) development, and (4) systems and other contrap formulation studies. The seriodors not include the cross of effort sponsored by a grant or required to the cross of effort sponsored by a grant or required in the performance of a contact. IS&D effort shall not may de technical effect expended to developing and preparing technical data spoulically to suppose submitting a lock or proposal.

\*\*Major contractor "as used in paragraph in (2) of this substration, mains any contractor wheat covered segments allocated to covered contracts a total of more than \$10,000,000 in IR&DoB&P costs or the preceding distallyear. For purposes of calculating the dollar threshold amounts to detentione whether a contractor regiments the delicator of image contractor "contractor segments allocating less than \$1,000,000 of IR&ToB&P costs to covered contracts in the perioding year shall not be included.

"Systems and other concept forms allow studies," as used in this subsection, means analyses and etially efforts either related to specific IR&D efforts or directed toward dentifying deviable new systems, equipment or compo-

udulo, se medificación and improvements to exist « ¿ systems excipenda, er compenents

- The Components and attention of court. The requirements of AK CFR 9904-420, Actions ing for independent research and development costs and big and proposal cests, are independent in their entirity and shall apply as to allows—
- (1) Fully-C49 envered coverages. Contacts that are fully-C49 covered shall be subject to all incorrements of 48 CTR 4491,429.
- (2) Modified CoS covered and son CAS covered controls. Contractional are not CAS envered on that you have some or conditions requiring modified CAS coverage should be subject to all requirements in 44 CER 9004-400 except 4K CER 9004-420. Site (2) and 45 CER 9004-400 specified), which are not then applied the How correspondence of Association to involved CAS covered compact as underlying compliance with 4K CER 9004-400. When the requiring compliance with 4K CER 9004-400. When the requirements of 45 CER 9004-400 Section 40 CER 9004-400. When the requirements of 45 CER 9004-400 Section and 45 CER 9004-400 specification and 45 CER 9004-400 specific
- on IRAB and BRP owns shall be a frequed to right used displaces on the same bysic of allocation used for the DARA expense grouping of the profit center (see PLOCIDE) which the tools are incurred. However, when IRAP and DAPA costs clearly benefit obtainful the attraction theory these uses shall be a twister, then ghoth GARA of the other profit centers to thereigh the GARA of the other profit centers to thereigh the preparate GARA, as appropriate
- (ii) If allocations of SR&D or D&Y strongs the G&A base do not provide equipped dost allocation, the contracting officer may approve use of a different base.
- (c) Attended by (1) This subparagnation (a) (1) implements section \$24 of the National Defense Authorisation Act for Fiscal Year 1991 (Pub. 1, 191-910). Frompt as provided in paragraphs (e.g.?) (d), and through this substration, to as provided in agency regulations, cases for [Reg I] and [S& I] are a lowerful cody in accombance with the (or owing).
- 10 Companies appointed to Accounte advance agreements (A) Any company that received payments for IS&D and IS&P costs in a hood year, some and a come constructor to subcontractor, exceeding \$7,000,000 for Ginversivent againsts, to exceeding \$7,000,000 for Ginversivent againsts, to exceed to insychology with the Ginversivent automorphy greaters which resolves with the Ginversivent automorphy greaters which resolves a critical few allowability of IS&D and IS&P code, for the following fiscall year. This agreement is ending an all Ginversivent agrees, unless problems to miding an all focusing the decision 200 of Pub of Law # \$40, necessions that the Department of Department DDN is the Isaf negotiating according to the interest DDN and IS&P from DOD. Computation of IS&D and IS&P from DOD. Computation of IS&D and IS&P from DOD. Computation of IS&D and IS&P from DOD.

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#### FAC 97—02 OCTOBER 10, 1997

## PART 3 —CONTRACT COST PROKUPLES AND PROCEDURES

whether the threshold criterion was reached shall include only recoverable IRAO and B&P core allocated during the company's previous fiscal year to prime contracts and sub-contracts for which the submission, and destrictation of sost or price global were respected. (See also paragraph (b) of this subsection are: (5.403-4.) The computation shall

include full burdening pursuant to 48 CPR 9904,820 (8). When a deeppary ment, the unitiest in (c)(0)((A) of this subsemble, inquired advance agreement may be reposited at the temporate leve, and/or with those profit certers that coeteact directly with the Government and that or the percenting years although proposition for 800 are B&P tools exceeding \$700,000, uncloding perfering, to contacts and sebecom acts for which the submission, and percentification of cost or printing data were required (set also paragraph to) of one subsection and 15 403 a). When certifies are neglicated for separate profit centers of the company, the allowability of (R&D and R&P costs for any court that in its previous fiscal year did not reach at \$100,000 threshold may be determined in accordance with paragraph to(1)(iii) of this subvention.

(C) On lings are the measurement of the amounts of small Readlance D&P costs that we take a rowable for allocation over the appropriate base for that bar, of the company's oberation covered by an advance agreement.

(D) No IR&D and B&P cost shall be allowable if a company falls to initiate registration of a required advance agreement before the end of the fiscal year for which the agreement is required.

(E) When regovariors are celd with a company mesung the \$7,000,000 criterion of with separate profit centers (when negotiations are hold at that level under (c)(1,f)(B) of this subsection, and of reconvened agreement. is reached payment for IRAD and BAP easts that bereduced below that worth the ecopany or großs concerwould have otherwise exceived. The amount of such reduced payment shall not exceed 75 percent of the amount Which, it the epition, of the renarating officer the centpany or postitionate would be estitled to receive under as allyance agreement. Written not Station of the contracting officer's energy nation of a reduced among shall be prowided the contractor. In the event that an advance, agreement is truit reached before the end of the contractor's fiscal year for which the gareement is to apply, negotiations scall immediately be terminated, and the contracting officer. shall ferruib a determination of the reduced amount.

(F) Constaction may appeal decisions or the contracting officer to reduce payment. The appeal shall be filed with the combacting officer within 3ll days of receipt of the contracting officers determination. (See also Subpair 42.10.)

(ii) Companies not required to regardate informe upresented. Costs for IR&D and B&P up allowable as cultives, expenses on concerns to the case of char those constant allocable and reasonable.

31,205-18

(2) This subparagraph (a)(2) implements section 600 of the National Defense Authenbard 2 Act for Histari Years 1993 and 1993 (Pul) 1, 190-190] and judfleeting for [RAD] and DAP costs incurred by a compactor disting riseal years of this contractor dual begin on an after October 1, 1992. Except as provided in paragraph (d) of this subsection, or as provided in agency regulations, exist for [RAD] and RAP are allowed as incurred expenses on contracts to the extent that those costs are allocable and reasonable. The following limitations apply to major contractors—

(i) For the first three contractor fixed years beginning on or after October 3, 1993, the total measurem allowable amount of IR&D/BAP note shall not extract the sect of:

(A) The total amount of subwarkin ERAD/BAP costs in the preceding fiscal year to at the lower of the one stous year's certains on actual costs incurred to plus

(B) Five percent of the amount in (c)(2)(0)(A) of this subsection; plus

(C) If the total americal of IR&D/B&P costs for a fiscal year is greater than the total amount of IR&D/B&P costs for the preceding fiscal year, the amount Cat is determined by multiplying the amount in [ar(2)/ii(A)] of Sessubsection by the esser of—

(7) The percentage by which the total animal of IRAD/RAP costs for a fixed year cacceds the total amount of such costs for the preceding fiscal year, or

(2) The percentage size of inflation from the end of the propriding fishel year to the real of the fixed year to: which the amount of the Emission is being computed. The tate of inflation shall be the price escalation endex to: the Revision. Correlaporate, Test & Revision (RDT&H) account. Total Obligator Authority (TOA) which is published anestally (normally in January) by the Department of Defense Complicities and used in proposition of the Annual submission of the Defense bridger. This race will be published in the Federal Regime, on an annual basis.

(6) Mayor contractors shall subtract, in accordance with agency guidance, financial and technical acfountation to support their URSEVBEP costs.

(but A walver may be pranted, or accordance with agency procedures, to increase the amount prescribed to (a)(2)(i) of this subsection for the Sulkowing special circumstances.

(A) To essure that the contractor's elements (R&D/B&P costs are at least the same amount that would revolute allowed under this subpart which was as effect of December 4, 1991, or

(II) When it is in the best intermed of the Giovernment

FEDERAL ACQUISITION REGULATION

#### 31,205-19

- ith Deferred INAC and B&P could. (I. IR&D could in wept incurred in previous accounting periods are unablewable, except when a contractor has developed a specific product at its own risk in undergonen of recovering the development could in the sale prior of the product provided that
- $\rm Tr_{\rm C}$  (the icra is report of ISASD coors applicable to the product can be denotized:
- (ij) The joination of such costs or same of the product a teasonable:
- (iii) The contractor had no Ginversement business during the time that the twick were incurred or old road allocate IR&D costs to Government contracts except to provide the cost of developing a specific product to the sales of that product; and
- (iv) No cases of careers IR&D programs are 4.0 issted to Government work record to prorate the career of developing a specific product to the sales of that product
- (2) When defented cours are recognized, the contract teacept firm-florat-price, and it sees price with according price of using a pill include a specific provisor welling forth the annual of deferred PA&D costs that are attached to the resolute. The regions on mentionalism will state the circumstances performing to the grant and the season for accepting the deferred costs.
- (e) Cooperative arrangements. (1) IR&D roots only be induced by correctors working jointly with one or more non-Federa, contress pursuant to a cooperative arrangement (for grample, joint ventures, limited participations and collaboration and convention arrangements). IR&D costs also may include costs contributed by contractors in performing cooperative research and dovelopment agreements, or similar arrangements, entered into under—
  - (i) Section 12 of the Stevenson-Wydler Technology Toursfri Action 1980 (1963-5 € 3719/21).
     (ii) Services (205(5))2: and (6) of the
  - National Aeronomies and Space Act of 1958, as abouted (42.015 C 2473(4)(5) and (6)()
  - (c., 10, U.S.C., 2370, for the Defence Advanced Research Projects Agency, 51
    - (iv) Other equivalent authority
- (7) TR&I) costs incorred by a contractor pursuant in these types of acoperative arrangements should be considered as allowable IR&D costs if the work conformed weelshade been allowed as contractor IR&D had there been no cooperation arrangement.

## 31.205-19 Loronzance and andemnification.

(a) Supergreen by purchase or by will-insuring includes coverage the promision is recurred to rarry, at to have appeared, under the souther the contrast and any other coverage the commercial manufacture with the

general conduct of its business. Any contractor devicing to establish a program of self-insurance applicable to conduct that are two subject to 68 CPR 9904-416. Accounting for Insurance Costs, shall comply with the self-insurance accurrences of that standard as well as with Pan 28 of this Regulation. However, approval of a conductor's tisurance program in accordance with Pan 28 does not constitute a determination as to the allowability of the program's not. The account of insurance tools which may be allowed to subject to the cost limitations are exclusions in the following subparagraphy.

- (1) Costs of insurance required to approved and maintained by the contractor pursuant to the evolusion are allowable.
- (2) Costs of frequence maintained by the controller in connection with the general conduct of its business are allowed, subject to the following limital one.
- (i) Types, and extent of coveright shall (1/3/4) shall business provide and the rates and premiums most be reasonable.
- [13] Clasts allowed for linemest internation of other similar insurance must be introduced advantage of product.
- (ni) The cost of property insurance primitions for insurance coverage in each of the acquisition cost of the insured assets is allowably only when the coverage of the formal written policy assuring that in the exert the obtained property is insufundable; converted, the new asset shall be valued as the book value of the teplaced areas place in actual replacements for differences between insurance processes and accounterplacement cost. If the nontracted does not have such a formal written policy, the cost of permission for insurance coverage in reserve of the acquisition cost, of the insured asset is unallowable.
- (iv) Costs of invasince for the risk of loss of or damage to Government property are allowable only in the earth that the contractor is faithful for such less or damage and more insulance does not cover loss of damage that regards from willred misconduct to lack of good faith on the part of any of the contractor's directors or officers or other equivalent representatives.
- (v) Contactors operating make: a program of softinsurance must obtain approach of the program when required by 28,308(a).
- pair Costs of insurance on the lives of officers, partners or pergentions are allowable only to the extentible the unsurance represents adoptional compensation (see 31.205-6).
- (3) Agrical broads are unallowable unless expressly provided for in the contract, except—(in limites the reminal resistance provisions of proclassed insurance or keeping with moral business practice, are allowable for contracts not subject to 45 CTR (\$4.4.6 and \$2.50 the

31-28 (TAC 97-01)

#### 31,265,22

## PART A: CONTRACT COST PRINCIPLES AND PROCEDURES.

geningger dag her either isn a self-frem num program. Siehcontracts a elizar subject to the soft insuffaced requirements. effold CFR with AIA (Sectioning to ADject to 48 CFR) 9904-416, and for those made subject to the self-instrument requirement of that Standard as a result of the contractor's having excelled a self-included program (see purigon). remaining community to that through they be used at 10 basis for uninger under a light esturance program when the lightly advant of some will out differ significantly from the progared average bases for the appointing period (see 48 CFR) 9904-416-50 and rayurus move instances where an actual ess ray agreement and the present value at the helders is determined under the provisions of 14 CTR 9904-416-"Open" (the place of low, ble cost shall be hunted to an arrow of computed using as allowouth the observations detecmined by the Societary of the Pressury pursuant to So Classification (213-102) in effect at the time the loss is assignment (Books on), the full automation a hompower service. many to be gold were a ground that Auto of settlement is 25'owa5tic

- one More boson, and as appliage breakage and disappearance of small bond to decreat our or or the coloniary course of social bosons and that are not a veral by insortance are alternative.
- (4) The sold of insurance of process the contracts against the process of contenting discover defeats. I make the of workmanship is unationable. However, insurance creds to govern conditions to costally linear resulting them defects the materials of work realising our aclosusce as a reminal best made exposes.
- (a) (here are for garageous se haskalate) insucance wenten to cover accumed and known bases are unablewable.
- the 31 banches of invariance is a verifible and a response any self-incorporate covering plus invariance acommod to an expenses shall not access the cost of apparathly produced manners of plus access catally a variance in affiliation of openses.
- (in freedome provided to captive insertes from somed to or incomplete for all of the contractor to consider all of the contractors to consider all of the contractors are considered for the complete of the self-freedom providence of 48 CFR 980-14 G. However, if the captive insufer also self-significant for provide public insulational quantities and it can be comparable that the charge in the companion is bound as competitive market times, the insurance will be considered publications.
- All the accepting of promining for insulance purchased from transity insure the contrastic Ansarzani companies on related to the contrast, but Abolton are with Scapave insurer of the continuous, shall and exceed the insurer plans reasonable training company courges for ver-

cars reinfered which the southactor would have been allowed out to insight directly with the edge so insight

... -. .

- (et Selt courance charges to mode of contomplitacoses are not allowable (see 26 MB)(e).
- 7. The Consenting of guided to indentify the contaction only to the retent within end by Lovillac expression only deplet in the couractic overprise provided in paragraph at 121 of the section.
- ign fare premit in payment charges to need to rimplay as defented to the switch plan inscribing increased pursus and Service 4007-09 U.S.C. 1937) or Service 4007-09 U.S.C. 1939 of the Employee Represent income Security Action 1974 yet upoff within

### 31.205-20 Interest and other Geandul Costs.

Integrate to burnowings toward in proceedable bond discioned access of managing and reliance in a capital free worth pure lump term in dold easy lagral and professional fees. Said discourses in with properties prospectables covered prime implantal coursy dock in play and directly associates costs are integlitation of energy fire increase inversions by blaze or hold through activable market flee conditions appealing in \$1.71.5-(1) responses \$1.00.3-0.41

## 31,305-21 Lahm relations costs.

Opens are modern maintaining satisfactors relations between the contractor and using the large cost of process of those sower to believe management committees, employed publications, and other related convents are allowable

## 31.295-22 Lobborng and polisical activity costs.

- (a) Compliance and with the to-done activities are unit-
- (1) Altempts to nathered the objected of only Federal, State on local effects in return dural introduction of silical processing through the Long or code communities on community processing examination as
- 2) Establishing, adjuntating transfer by the migray by the expense of a polytical party, can be taken by the expense of a polytical data as the first operation as the first operation as the first operation of the expense of information and the expenses of the expense.
  - (2) Any attempt to adhere e-
- $\mathcal{H}^{1/2}$  by probability on of Followick the so bould be able with the
- min The envelopent or modulus and any percing Federal, state, or local light appropriate photonium solves with any member or employee of the Compression for logistated unduring enforced artiflication state of both solves is to regage in conduct hopology with a constraint may great in note of feith or employee or community of the control of size of separatellistic oppolation.
  - (4) Any attempt to influence

 $31 \cdot 29$ 

## 01.205-23

### FEDERAL ACQUISITION REGULATION.

- (1.) The introduction of frederal, state, or well applied to be
- 1.3) The chapment of modification of any pending Federal, state or local legislation by peeparing, distributing or using popularly or propagation, see by mighty premises of the general public of any segment thereof is contribute to or perticipate in any mass demonstration, matching to 3, ford raising drive, locating campaign or level whiting or tale phase campaign:
- (5) Legislative Laison serveties, methodrop attendance at legislative sessions or committee hearings generally information regarding legislation, and analyzing the effect of legislation. When such act with the attention of extraordinal mappens of the intercoming proparation for an effort or regogn in one covable acquires; or
- (A) Covey incurred in absorpting to improperly indicence (see 3.401) is their directly or inducedly, an experyence of officer of the Executive branch of the Enderal Government to give consideration to or act recarding a securitory or constabilities.
- (b). The following activities are excelled from the case edge of fat of this section.
- the Providing a technical and factual presents on of information on a topic directly is also to the performance of a contract though heating testimony, statements or letters in the Congress or a state legiculture, in sufficiency, importing a sugainant staff common control in prepare to a cooparmed request (including a Congressional Record natice) requesting testimony or statements occube topard at a revufaily Atheoded hearing) made by the recipiest memory, legislative leady or sold server, or a cognigate scaff member. thereof: provided such information is readily obtainable and can be readily put in its overable form, and further provided that 60400 order this section has transportation, halping or mouls are enablewable unless mournes for the purpose of offering testimony of a regularly scheduled Concressional hearing pursuant to a written recides; for such presentation, made by the Chamman in Ranking Minority Months of the Committee or Subcommittee constraints such hearing.
- (2) Any oblying made unalequate by paragraph tag(s) of this subsect out to influence state of facilities from in motes to describly reduce contract cost to the avoid material impairment of the congregory symbotry to perform the congress.
- (5) Any activity speciosally authorized by statute to be undertaken with finish from the contract.
- (g) When a contractor series (climbiostroon) for inclined action total lookying costs shall be separately identified in the indirect cost rate or spo-all, and thereafter treated as other unallowable actions (IPSE).
- (d) Connection (Shall maintain aprepare records to demensize that the confidential of costs as bring allowble or unallowed a (see 42.50) 20 persuance this

- subsection complies with the requirements of this softention
- (e) Le sing procedures should be at light in reso, so it advance very significant questions of disagreements conversing the interpretation of application of this subsection.

#### 31,205,23 Losses on other contracts.

An excess of costs over monte under any other contract (maluding the community contributed pool on usees costs sharing (material) is unallowable.

#### 31,205-24 Meintenance and reggin costs.

- (a) Cover property, unless otherwise provideding Coverment property, unless otherwise provided (a), that neither add to the permanent value of the property non-agorithably prolong its intended life, but keep in in an emitted spraying condition, are to be treated as 1,000 as that we 31 205 (1).
- (1) Normal multination and repair costs on allowtions.
- (2) Extraordingry maintenance and repair costs are attraction, provided those costs are advected to the applicable percess for pulposes of deteorings consist cross that see 31 (199).
- (b) Expendiences for plant and equipment, including exhabilitation which should be capitalized and subject to degree attention according to generally usuappind associating proceedings as applicable, according to 4K CFR 9901-404. Capitalization of Tape did Assets, are also able only on a degree attentions.

## 31.205-25 Manufacturing and production engineering roads.

- (7) The costs of manufacturing and production organizating effort as described in (1) through (4) of this paragraph are all alknowledge.
- (1) First oping and deploying new or improved insterials, systems, processes, methods, equipment, tools and rectaliques that are to are expected to be used in producing postuats in services.
  - (C). Daveloping and copinying price production times:
- (3) Emotioning current production functions, such as plant layout, production scheduling and control, methods and job analysis, equipment capabilities and capabilities imposition tremitiques, and back by analysis (methods by booking design and application improvements), and
- (4) Material and manufacturing productioning chalves for production smalthing and to option as that of actioning processes, methods, and techniques.
  - (b) This cost principle does not cover—
- (1) Toxic and applied research office cas defined in 01.205 (Nat) or aird to new technology, materials, sys-

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## PART 3:- CONTRACT COST PRENCIPLES AND PROCEDURES

31,205-74

toms, processes, includes, equipment, tools and rechniques Surfic recognical offort is governed by 34,205 (8, Independent research and development and bid and proposal cheek, and

- (2) Development effect for manufacturing or production upon materials. Systems, processes, methods equipment tools, and techniques that see intended for sale is also governed by 31,005-18.
- (c) Where manufacturing or production development costs are capitalized or required to be capitalized and other contractor's superalization politices, allawable cost will be determined in accordance with the requirements of 11,205 (1) Depreciation.

#### 31,205-26 Material coats.

- (a) Material costs include the costs of such items as raw materials parts, sub-assemblies, components, and trianufat runng supplies, whether purchased or manufactured by the contractor, and may include such additional items as inbound transpectation and inhardictionstance in computing material costs, consideration shall be given to manufable overtures spoulage, or defective work (unless otherwise provided in any contract provision relating to inspecting and correcting delective work). These costs are allowable, subject to the requirements of paragraphs (b) through (c) of this section.
- (b) Casts of material shall be adjusted for income and other origins including available made discourse, refunds, retords, abovences, and cash discourse, and credus for scrap, salwage, and material returned to verticing Siery income and other credits, shall either be credited Errory to the east of the material into allicenses as gradit to address takes each discourse was reasonable, lost discourse ceed not be credited.
- (e) Responsible adjustments arising from differences between periodic physical unveniones and book inventories may be the add in arriving at costs; provided, such adjustments relate to the period of contract certormance.
- (c) When maintais are purchased specifically for and are identifiable solely with performance under a courtain the actual burchase cost of those materials should be charged to the contact. If material is instued from stores, any generally recognized method of pricing such oriental is acceptable if that method is consistently applied and the tesulis are equitable. When estimates of future material costs are required, content market years or articipated acquisition cost they be used, but the basis of pricing must be disclosed.
- (e) Allowance for all materials, supplies, and services that are odd or transferred between any discretors, sublivisities, subsidiaties, in affiliates of the contractor under a common central shall be on the basis of east incurred to

interretance with this subpect. However, allowance may be all order when it is the established practice of the three-firring organization to price interespondances; transfers at other than cost for commercial work of the contractor or any division, subsector, or off-liste of the contractor under a costument cost of, and when the item being transferred qualifies for an exception under 15 a02. (b) and the contracting offices has not determined the price to be unceasonable.

(f) When a commercial item unity paragraph (c) of this subsection is blackformed at a print based on a catalog or market prior, one price should be adjusted to reflect the quantities being required and may be adjusted to reflect the actual cost of any minklifections recovery because of conlocal responsibility.

## 31.205-27 Organization owns.

(a) Except as provided in paragraph (or of this enhanction, expeculitures in commutation with (1) planning priexecuting the organization or reorganization of the corporate attacture of a business, including mergers and adquisitions. (2) resisting as o arming to resist the reorganismion of the conjugate structure. of a business or a change in the controlling instruct in the Owiestup of a historium, and (3) raining expital (not worth plus long-term liabilities), are unallowable. Such expensivtures installe but are not timused to incorporation Sees and costs of accenteys, accountance, brokers, promoters and orgarupers, granagement consultants and development counselors. whether or not employees of the contractor Conflowable. "teorgamization" costs include the cost of any rhange in the contractor's financial structure, excluding administrative rests of short term, parrowings for working capital, resulting in alternations at the rights and interests of security holders. whether or not additional capital is based.

- (b) The dost or ocuvities premaily carended to provide compensation will not be considered organizational cases subject to the subsection, but will be governed by 21,203-6. These activities include supporing vasor for—
  - (2) Executive beneated
  - (2) Employee savings plans, and
  - (!) Employee stack ownership plans:

## 31.205-28 Other business expenses.

- The following types of recorning mosts are allowable when allocated on an equilable book.
- (a) Registry and transfer charges resulting from charges in owner-bip of securities issued by the contractor
  - (b) Cost of shareholders, meetings
  - (c) Normal penaly solicitations
  - (4) Proparing and publishing reports to starchedden.
- (c) Properting and solvening required reports and forms. to taking and other regulatory bodies.
  - (f) fondmiss mais of directors, and committee meetings
  - (g) Other similar resus

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FEDERAL ACQUISITION REGULATION

## 31,285-29 Plant protection tosts

Casis of nems surplas-

- (a) Wages, philopoly, and equipment of personnel engaged in plant progression.
  - (b) Depreciation on plant patterner capital scene, and
- (c) Normany expenses to comple 4.0 military requirements, are allowable

#### 31,205-30 Petrot calcu

- (a) The following patent costs are allowable to the extent that repy are incurred as requirements of a Ginvernment contract (but see 21.205.73)
- (ii) Coass of preparing inventors discretime, separts, and other documents
- (2) Costs for searching the six to the error necessary to make the invention discussions.
- (i) Cities costs in connection with the filling and prosecution of a United States patent application where title or royalty-free literants to be conveyed to the Covernment.
- (h) General cognitioning services relating to patent ππιtors, such as advice or patent laws, regulations, clauses, and employee agreements, are allowable (for one 3), 205–331.
- (a) Other than those for general counseling territors, paters create not required by the contact are unallowable (Seculor 33 205 31)

## "[, 205-31 Plant reconversion costs.

Plant reconnects or rosts are tracts incremed in testoring or prhabilitating the contraction's landings in approximately the same condition expect immediately before the start of the Government contract, fair wear and trac excepted. Reconvention costs are gradientable except for the cost of removing Government properly and the respection or testibilities costs caused by such removal. However, in special discussions where requiry to discuss, suddicted costs are meaned. Case small be extended to assume duplication include a small duplication include allowance as each regences, additional grotte or in reflect contracts.

## 31.205-32 Precontract costs.

Precontact and are made incomed before the efficuse calls of the contract discussive personn to the aegunation and in anticipation of the occuract goard when each incomes in accessary to comply with the proposed operant delivery subsocie. Buth mate are allowable to the extent that they would have been allowable. Financed after the date of the contract user 31 1099.

## 31.205-33. Professional and consultant provice costs.

(a) Definition. "Professional and consultant services as usual in this subpain and those services condeted by January who are members of a particular goodssion or generals."

a special skijf and with are not officiars or employees of the contractor. Examples include thosy survives acquired by replacement of subcontractors are subcontractors or entering enhanced their legal, attendate, financial, or replacing positions. Professional and consultant vervices are penerally sequined to obtain infectionation, advice, opinions, alternatives, correlations, pergeneralizations, maining, or direct assistance, such as a tides, anxious, evaluations, historic with Glovernment of mass, or other forms of depresentation.

- (ii. Costs of professional and consultate errorest and allowable authors to this prospreph and paragraphs (v) theology (f) of this subsection extraorest and in telautor to the services rendered and when not corting rill upon recovery of the costs from the Government (but see 3: 205-30 and 2: 205-47)
- (c) Costs of professional and constituent services of ferred under any of the following circumstances are mollowable.
- (1) Services to improperly obtain distribute, or osciolismation or dwa protected by law or regulation (6.2 52 215-1(c), Restriction to Disclosure and Use of Data).
- (7) Services that are intended to improperly inflatence the contents of endentations, the evaluation of proposes or quotations, or the adjection of sources for engages aware whether award is by the Government, or by a prime contractor or subcontractor.
- (3) Any other services intained, performed, or affectivise resulting or violation of any statute or regulation proceduring improper business practices or conflicts of interest.
- (4) Services performed which are not consistent with the purpose and scope of the activities constrained for an othenwise agreed to.
- (d) In determining the allowability of costs (including retainer feets to a particular nave, no single latter or any special combination of loctors is necessarily determinative. However, the contracting officer shall consider the following factors, among returns.
- (a) The native and scope of the service tendered in the points to the service required.
- (2) The accessity of custoacting for the service, considering the contractor's republiky in the particular area.
- (i)) The past pattern of adjusting such accepts and their costs, particularly in the years prior in the award of Gravernosti contracts.
- (4) The impact of Government commets in the contractor's business.
- (5) Whether the proportion of Government work to the contractor's result business is such as to influence the contractor in favor of incoming the result behaviors when the solvides rendered are not of a contributing pacers and have title relationship to work under Covernment contracts.

31.32

#### 31,205,35

#### PART ALL CONCRACT COST PRINCIPLES AND PROUBLE RES

- (4) Whether the service can be performed more onemunically by employment rather than by contracting
- (7) The qualitations of the individual securities rendering the service and the converse for a roughly sepscially on non-Covernment contracts.
- (iv) Adoptions on the control tail agreement for the considering loose appearing the consider extends of the consideration and only the consideration of the
- per Retained tree to be allowable, must be supported by suddenessing:
- (1) The services covered to the rotality in restricts are recovered and customary.
- (i) The level of past services the feether minuted the remote fock of no services were rendered, took see not automatically uned excepte;
- (4) The letamenton is travalable as a of fair on with maintaining an archouse databality in participation, we also feel services when fair you such as door and level of repution are amounted, and
- (4) The actual services performed also contents the acconducte with paregraph (first decondensition).
- of) Figs. for services rendered they, he allowable only when supported by the could all the nature and scape of the service. Turnished (1976) also 181 205 48 for However, returned agreements benefitly one not based of specific scape mass of which be scened nectionly to determine that were personned in groups and does for sociale low or regulation shall problems.
- 1.3 Petal's of all agreements july, work requirements, rate of compensation, are nature and amount of america paperson, it may with the are softeness in against much providing the servers and details of actual servers performed.
- (2) Tokonica for Schings solve that by scoredization including sofficiant databases to the name expended and nature of the groups services by provided; and
- (3) Consultants, under products, and reduce themments, such as Cip reports for our neglections system and Chieges, discussed, indicates on increases, and to lateral memorands and reports.

## 31,305-34 Recruitment costs

- in a Subject to paragraphy (a) and (a) Selow, and provided that the confortile stall recognitions monitored is in keeping with workload requirements, the following costs are flowable
  - (C) Costs of he powented of sector (g)
- (2) Closes of operating on employment office needed to segmentable minimum an adequate lower torus.
- Count of operating an appropriated with solutional testing program
- (4) Travel costs of employees equical or promong presented

- (5) Travel costs or applicants for interviews
- (or Costs for my loyured agencies, not in Cocss of searches commercial rates.)
- (t) . Here warms I advertising closes are a callboards in the advertising  $\boldsymbol{\theta}$
- (1) Is fin personnel other than those recurred to pertorne on particular a Cinyeria, end-contract.
- (2) Does to rewrite sprints positions a slasses of positions.
- (3) It expenses retained to the number and increasurance of the positions of to the products.
- (A) Inchesy Hatera, this is not relevant for portion them purposes, such as contensive all historic as of descriptions of the company's postures or adjoint two.
- (So to designed to "palate" personne from another Government con coctor to
  - (#) Includes cook (in publications
- (c) Loggesting competition must obtain it is Stopped of emplayees to a proof of the front another the employed such matter are multi-walle. Such a Geossies costs in tylincholar schange, traggebrandity to special cost in the two of \$5.50 and a Geossian variously must provide a conduct that is does to many compensation process.

#### 31.3%-35 Relineation costs.

- ray Reference costs are nosts a cultant to the permanent chance of dust assignment of minimisely in a period of the sound period, but in other system for not less than 12 worths oil an existing employee of approximation of a rew appropria. The following totals of tobast on sous are allowable as worth, subject to puny spins totals of the subsection.
- in it. Code or based of the employed and perulasis of the times and the code see \$1,305.161 and transportation of the roughfuld and personal effects to the new formum.
- (2) Cosper finding a new learnt such as 20 and 2 from by reaproves and specifies in some living quarters, are composing adopting the transform periods and exceeding separate conducts at teachs of telling the empiry research 45 days for up cases and dependents, including presence top land.
- (2) Clustery costs that he knows test legal feet, appeared feet, points, trained charges no file identifies the dispersion of last all residence owned by the employed when reprint of trainfall except that these mosts when added to the costs occurrified as subcatagraph (a)(4) of this section shall be control of powerful the sales print of the property odd.
- (a) Continuing costs of owner-dup of the Second of man period resultance being soid, such as maintenance of our ding and grounds are accessed from up expenses of the lines. Takes, properly inscription, unargues, merch, offerset lemma. Take on losse dom of now period on resolvers.

#### 31,205,35

#### FEDERAL ACQUISORUM REGULATION :

expect that these costs when added in the posts described in adparagraph (a) (1) of this vector lebel and exceed 14 per cent of the sales prior of the property so 6.

- (5) Other necessary and reasonable expenses normally incident to relocation such as disconnecting and connecting household applicables, actions to registration, driver's license and use taxes, butting and fitting lings craperies, and dustants, his fested utility free and deposits and published it assurance against damage to or loss of personal property while in Iransu.
- (b) Costs incident to adjutting a home in a new location, expept that
- (i) These costs, will not be allowable for exploraestablyees or new accounted conjugate who, before the relocation. Percount to recovery and
- (ii) The total court shall not execute 5 percent of the purchase prior of the new home;
- (7) Mongapt interest differential payments, except that there costs are not allowable for existing or nearly mero and employees who before the relocation. Here not homeowners and the total payments are limited to an amount determined as follows:
- for the difference provings the mangage integer rates of the old and new resolutions times the current palance of the old mangage times ( ) years
- Init When morgage differential payments are sade on a long sum basis and the employee leaves or is transferred again in less than 3 years, the annual initially recognized shall be propositionately adjusted to reflect payments only for the autual time of the relocation.
- (8) Rental differential payments envering wit, aritins where relicated employers retain ownership of a vacated more in the old hospion and rent of the new location. The remtos quoriers at the rem location must be comparable to those variated, and the allowable differential payments that exceed the actual rental costs for the new bonns, less the last market retail for the matured future forces 3 years.
  - (9) Cost of canceling an inexport fease
- (b) The doors described in paragraph (a) of the semiorment also meet the 104-owing scribers to Selvers correallowable.
  - (1) The move must be for the benefit of the employer.
- (2) Reimoursement must be in accordance with an established policy or produce that is consistently followed by the employer and is designed to motivate employees to relocate productly and economically.
- (3) The costs crost but otherwise be analysished under Surgant 31.2.
- (4) Accounts to be reinfluenced shall not exceed the employee's actus, expenses, except that for impedianeous costs of the type discussed in subparagraph (a)(5) of obsisteding a flat amount and to recent \$1,000 may be allowed in focular actual types.

(c) The following types of costs are not at emable:

- (1) Loss on valued a home
- (2) Costs incident to adquiring a home in a new howtion as follows:
  - (i) Real cyale brokers less and commissions
  - till Could pleater
- (iii) Real and betsonal property insurance against demage or loss of property
  - (iv) Mustpage life insurance
- (v) Owner's richt policy insurance when such insurance was not proviously carned by the amployer on the oktrasidence incoverer, cost of a mergage title policy is allowable.
- 1411 Property (Axes and sprinting or maintenance)
- Continuing multyage principal gaymens on rest dence being sold.
- Payments for employee income or FICA (word) security listers indicate to re-mourse valuation costs.
- (5) Physicist for job counseling and placement accessions to employed spouses and dependents who were not employed of the contraction at the All Income.
- 16) Costo les destitut translamp export or noverproy costs to employees or making entingements with landers for employees to obtain inwoodhar-market paramongage, conti-
- (d) If indication death for an embloyee base been ullowed more as an allocable indirect or direct cost, and the employer maight within 12 months (or reasons well-or the impleyer's control, the contractor shall reduced in electric relocation costs to the Government.
- (a) Subject to the requirements of paragraphs (a) through (d) of this section, the costs of family innormalised of personal managements of a special or mass hange are alkered in The cost, bowners, should be assigned on the basis of work contracts) or time period benefited.
- (O) first oranion costs (both outpoing and seturn) of employees who are nired for performance on scenario contracts or long term field projects are allowable ti—
- (3) The term of employment is not less than 12 marks.
- (3) The employment agreement specifically hunts the duration of employment to the time specifics the control of field project for which the employee is hims.)
- (2) The conflayment systement growstey for intumtelessation to the employee's permanent and provings home immedizedly prior to the outgoing relocation or open homtion of equal or broad cost; and
- (4) The relucioson costs are determined under the rules of paragraphy (a) chrough (d) of the section Rewrite the costs in return employees, who are re-eased from employment approximately of field assignments parameter action of field assignments parameter to the reset of or credit employment agreements, are not subject to the reset of or credit requirement of paragraph (d)

## PART 31—CONTRACT COST PRINCIPLES AND PROCEDURAS

## 31,205-36 Remial costs.

- (a) This subsection is applicable to the east of reality of agong reality personal property acquired under importating leases as defined in Statement of Financial Accounting Standards, No. 10 (FAS-10). Accounting for University Medical Accounting for University and Accounting for University Medical Accounting for University Medical Accounting for University Medical Accounting for University Medical Accounting for University Accounting to the Accounting Medical Accounting to the Accounting Medical Accou
  - 76). The fellowing costs are allowable
- (1) Began love a malor operating located to the estraints at the tage are representated at the time of the leave decision after connectation of
  - it. Remai costs of companions properly, it also
  - ing Market conditions in the torsi,
- $\sin i$  The Type, the especiancy, couch so, and value of the property leased.
  - riv). Alternatives available, and
  - 495 Frings growns caused the agreement
- (2) Remajore constend rule and leaveback strongs should only up to the present the conduction would be said or of if the conductor retained (ithn
- (7) Charges in the nature of rent for properly believed any directions, subsidiaries, or organ entities under electrical portrol, to the extend distribely do not exceed the normal suchs of twereship metros depreciation, takes it suprove, facilities tagost one of nevery, and manuferance textiliding interest in other analoxiable costs pursuant to Part 21), provided the not part of sear costs shall drop early any interval allowed two national cost or personal property forest from any division, and division, and extended the component moder conduction and that has an exceptible practice of freeing the same of seritor property to manufacted (essees shall be allowed in accordance with supparagraph (2011) of this someoner.
- 191 Rengal could make leases entered into better March 1 1970 for the remaining tendent the lease (ex. obtaing uptions not exercised before March 1, 1970) to the effect they would have been allowable under Defense Acquisition Regulation (formerly ASPR) 15-203-34 or Follow Productionals Regulation's section 1-15-203-34 in effect January 1, 1989.
- (a) The allowability or tental costs under measurable leases in connection with terminations is breated in 20,205 44(a).

## 31.205.37 Royalises and other costs for use of pairots.

(a) Bevalues on a patentian ununtitation or the coverof princhasing a patential patent rights are essent for the proper performance of the contract and applicable to contract products or princesses are allowable units.—

- (ii) The Government has a coerce of the highlitoid free use of the potent
- (2) Ying patent rais from adjusticated to be invalid, or has been admin street only determined to be invalid.
  - 5) The patent is considered in the monitorizable, of (4) The patent is expliced.
- (b) Core should be exercised in contrasting translands ross when the myab eximal case been employed in a result of less than armino engle, bargantine, e.g., myabins—
- prio Paid to persona including corporations, e<sup>1</sup>61 and with the currence.
- (2) Prof. pr. moff coirci parties individing corporations, under an agreement council into in contact place of the artimograms of contract which on excelled in.
- 75) Publisher an agreement in cost into after the contract awards.
- Applies my case and amount representatively owned by the corresponding regular panels that a suited the properties which should be a been also well but the contractor technique.
  - (d) See 31, 170 repinding advance acrosticate

#### 31 305-38 Selling costs.

- no inSelling has been drain associated all settlers to prefer the contractor's production settlers, whose of Which are covered operationally of other conservations of \$1.000 Selling pacificial years are full owing treat congrues.
  - (41) Advertising
- (2) Corporate image estimatement including broading conjected sales efforts, once that according to
  - (i) Bid and proposal costs
  - (4) Market planning
  - 15) Direct sellary

(so Advertising closs are defined in \$1,305-1001 and the sphires of the allowability provisions of 3, 200-bill and infl. Corporate langue eitherections and video are merceed within the definitions of public relations of \$1,205 ((a) and entersimmed at 21,205 (1,550 are selfgas to the eligibationly provisions at 10 205 for; and the and 34 205-14, respectively. Bull and prepays rosts for and held at 30, 200-38 and have their allowing any computed. ny thut subsection. Markot plantony to objek markot regression and availables and poneral and macadement of inning conserved with development of the contractor's business. The alknown in long-range market planning costs is controlled by the provisions of 31 205-13. Other market planning made are allowable to the extent that they are reasonable and not a excess of the implement subgaragraph (2002) of this subsection. Costs of withstep which are correctly classified and disallowed under cost principles references in this paragraph to lare not to be inviolable ad 50° reimburschurst under 200 onber provision. of this subsection.

#### JL.205-39

## TEDERAL ACQUISITION REQUIRED.

- (cold) Direct selling efforts for thise area of across produce particular proceeds to parchase particular proceeds or strokes of the contractor. Direct selling is characterised by person to because of an includes such acrosses at familiarizing a potential customer with the contractor's products or respectively conditions of sale services appointments. It also maintees organizations, baisan between customer and contractor personnel, technical and densulting actorities individual demonstrations and any other actorities individual demonstrations and any other actorities unitations as your despite on the contractor's products or services for a cardiously of freasonable is amounted.
- (2) The costs of broadly targeted and direct or ting efforts and tracket planning other than ong-range, that are incurred in connection with a significant effort to entire expert sales of products normally hold to the U.S. Government, including the costs of exhibiting are disconsistently such as a large of exhibiting the costs of exhibiting are the normalized by S. Sickenment provided the costs are a total tile, reasonable, and increwise allowable after the Support 31.7.
- If the costs of any self-by effects single than those addressed in principles (b) on (c) on this subsection are insulfigurable.
- to Costs of the type sentified in paragraphs (b), (c), all third this substitution are not communicized or the constitution's cocks in the selling expense account because these activates are performed by the sales departments. However, intensification and segregation of an above the costs is required either the provisions of \$1.00 -6 and \$0.000, and such costs are not allowable mercly because they are incomed in connection with a low-third selling are constituted.
- (i) but withstanding only other previous contributions from apents' congensation, less, commissions percentages, relation or brokerage first, whether in non-contageat upon the lewest on contages, are allowable or aword on perd to both file employees in established commission paid to both file employees in established commission and of selling age to as maintained by the contestion for the purpose of securing cognitive.

## 51,205/29. Service and warranty circle.

Service and warranty convenience mose arlying from follfillment of any contractual obligation of a contractual obligation of a contractual provide services such as installation training, contracting detects in the products, reporting defective pairs and staking refuses in the case of insideduate performance. When not obtained to the terms of the contract, such service and warranty costs are allowable. However, care should be contracted to a conditional as an element of both estimated product and and risk.

FE.205.40 Special tecling and special test equipment costs.

- (4) The terms in pecks too sign and investigates along more if are defined to 45 (01).
- this The cost of special tasking and spraint rest equipment used in performing one or more (investment contraction at lowable and shall the allocated to the special Cookermant contract or contracts for which acceptaint except that the end of—
- (4) Items arquired by the contracts, before the effective course of the contract for ten account of such incress whence or not altered or adapted for use in performing the contract, and
- (2) Brees which the contract schedule is earlically exclusive, shall be allowable only as depreciation or automizating.
- (c) When terms are disqualified as spread oncome or the fault test equipment threather with inclusively moved extense they can be made smoothly for general burgate use and born a value as soon commenturing with the covaries spread techniques years test equations. The cost of that ip ing the tiens for the under the costs, and one could returning them to their poor configuration and converted

#### 31,205-41 Tuars.

- the The 65 ewing types of coopies at allowable.
- in Friday? Size, and local taxes over Red 29 recognise where so provided in paragraph of often contain that are required to be and are paid to account in accordance with personally accessed assumpting principles. Fine, and penalties are necessarily considered.
- (7) There inherently a tweathe under subparagraph (a)) inhibits serion, but upon which a claim of the ending of emocody the exhibition of a provided the undrawn harbine on he such taken.
- If Promptly requests districtions from the disciculating officer superior power times, and
- the Takes all sent of direction by the contracting of Soci arriving out of subgretzgraph (2) and of moves from a section of an interpretable decision of the Government as to the existence of a cultinol. Regulation of a nonematary expension of the
  - (A) Determine the legal twist the assessment on
  - By Secure a refund of such taxes
- (3) Problem to subparagraps (a) 2 of this segmen, the reasonable costs of any art on towards by the contraction at the theorem on the contraction of the theorem of the contractor for the contractor for not provided to property into the direction of the contractor for not payment of any tax at the direction of the contractory of feet to the contractory of feet to ensure time for the contractory of feet to ensure time for the contractory of feet to ensure time for the contractory of th
- (4) The Province and Tax found in section 5 Pages the Indiana Research Code above addition Superfuse Code (N) The following types of codes pagings in 2005 y.

## FAC 97-02 OCTOBER 10, 1997.

## PART 31 CONTRACT COST PRINCIPLES AND PROCEDURES

31,205-42

- (1) Tederal income and excess profits (axes.
- (2) Taxes in content of with linaroung, remaining, or fading operations, or reorganizations over 3 (205-20 and 31,205-23).
- (5) Takes from which exemptions are available to the contractor directly, or liver able to the contractor based on an exemption affected the Government, except when the contracting officer determined that the atomic statistic harden metakent to obtaining the exemption obsertable theoretispoiding bettelms actuaring to the lockernment. When puritial exemption from a facility attributable to Government activity, takes charged to such work in excess of that amount revolting from application of the preferential two(ment are obtained from applications more creativity to reduced by the Government Contract activity to regional by the Government Theorem contract activity to regional by the Government Theorem per and includes a tax abatiment to reduction overlastic resulting from mode of association or otherwise.
- (4) operial assessments on and that represent capital improvements
- (5) Taxes (including excises) of real or personal property, or on the value, use, possession or sale thereof, which is used solely in connection w.2, work when that on Government contracts (see paragraph (c) of this section).
- (6) Any expise its of subcide D, chapter 40 of the Internal Revenue Code of 1986, as attended. That chapter includes exerts Gales Ungosed in connection with qualified proving plans, we foce plans, deferred compensation plans, or other similar types of plans.
- (7) Income tax activals designed to account for the tax effects of differences, between taxable meants and pertial income as reflected by the backs of account and financial seasoners.
- (c) Taxes on property (see subparagraph (b)(5) of this section) used solely in connection with either mor-Government or Government work dupid he considered directly applicable to the aespecta elegacy of work unless. the amounts involved are insignificant or comparable resolts would otherwise be obtained, algorithmen contractailnewhed work-in-process which is used solely in connection with non-City remment work should be allocated to such work; wises on contractor-owned work-in-process anventory (and Government owned work in process titve): tory witen raxed) used solely un connection with Circumment wink should be charged to such work. The cast of taxes incurred on property used in both Government and nor-Covernment wink shall be apport oned to all such work based agon the use of such gaupanty on the respective final casi abjectives.
- (d) Any taxest interest, or penalties that were allowed as contract costs and are refunded to the contractor shalf be credited or paid to the Government in the manner it directs.

If a contraction or subcontrained obtains a foreign tax credit that necessis U.S. Federal income tax heceaner of the payment of any tax or dony allowed as contract coats, and if those costs were reimbursed by a foreign government, the account of the reduction shall be paid to the Treasurer of the United States at the time the Federal income tax return is Uted However, any interest actually paid to confide the precision of the Contractor incident to a refined of tax interest, or peralty shall be paid or credited to the Government only to the extest that such interest serviced over the period during which the contractor had been in inbursed by the Convenience to the taxes, interest or penalties.

## 38.205-42 Tempination costs.

Contract terminations generally give the to the interrence of corosion the need for special treatment of corosion that would can have a seen had the contract not been terminated. The following cost orner, pleasing to tempination situations are to the level of conjunction with the other cost principles at 3-depart 31.3.

- (a) Common news. The costs of means reasonably usable on the contractor's other work shall not be allowable unless the contractor contries evidence that the means could not be retained at cost without sustaining a low. The extracting efficies should consider the contractor's plans and unless for current and planned production when determining of items can reasonably no used on other work of the contractor. Contemporateous purchases of terminance by the contractor shall be regarded as evidence that such items are massinably usable on the contractor's other work. Any acceptance of common items as allowable to the terminated position of the contract should be limited in the extentional position of the contract should be limited in the extentional contract of the contract should be limited in the extentional of contracts of the reasonable quantitative requirements of other work.
- The Contributing other termosotion. Despite all realizonable official by the controller, costs which control be discontinued immediately after the effective date of termonation. The sentrally allowable. However, any costs continuous after the official date of the remination due to the regioner or willful failure or the contractor to discontinuous the costs shall be unallowable.
- (a) Initial control Initial costs, including states place and preparatory costs, are allowable as fallows.
- 11) Starting load costs not fully abunded hecause of termination are nonconsuming (above majorial and irritated associated costs incurred to the early pain of production and reset from factors such as—
  - (i) Essessive spoilage due to inexperiment labor;
- (ii) for time and subnormal production due to its ing and changing production methods:
  - titi) Training, and

SEDERAL ACCORPITION SAGULATION

#### 51,205-43

- (iv) Lack of Samiliarity or experience with the reductionstensis, or inscurationing processes.
- (2) Proparatory costs incurred in propioning to perform the terminates constact include such rosts as those incurred for injust plant rearrangement and alterations, management and personnel organization, and procurring planning. They do not include special machinery and equipment and standing lead costs.
- (3) When initial costs are included in the self-ment proposal as a direct charge, such costs shall not also be included in overhead. Initial costs and buildle to only one contract shall not be allocated to other contracts.
- (4) If initial costs are claimed and have not been segregated on the contractor's boxics, they shall be segregated for sectlement purposes from tool reports and whed lies reflecting that eight unit cost incorrectioning the early stages of the contract.
- (5) If the sectioners, projection on the november, basis, mutal costs should normally be allocated on the basis of basis and name called for by the contract immediately before terrasactors, sowever, if the contract includes and name of a diverse name, some other equilable basis may be used, such as machine or label; hours
- (d) Lori of useful valve. Stave all useful value of special tooling, and special machinery and equipment is generally allowable, provided—
- (1) The special tooling, or special machinery and squigment is not cravously capable of use in the other ways of the contractor.
- (2) The Government's interest is proceeded by dynater of tide or by other means decaded appropriate by the contracting officer, and
- (3) The loss of useful value for any one removable contract is limited to their portion of the adjustation cost which bases the same rules to the total anguisticin cost as the terminated person, of the contract bears to the entire remotated contract and other Government contracts for which the special findling of special machinery and equipment was sequent.
- (a) Renny under anatomed leases. Beingt and under unexpired leases, has the residual value of such leases, are generally allowable when shown to have been masonably presentably for the performance of the territrated contract.
- (1) The amount of ternal relationed does not exceed the passinable use value of the property leased for the period of the conteast and such faither period as may be reasonable; and
- (2) The contractor makes all reasonable officials to terminate, assign, spills, or eitherwise reduce the cord of sicolesso.
- (f) Adventions of leased property. The core of litter atjuncted reasonable restorations required by the lease may

on allowed when the automation's were necessary for performing the contract.

- (g) Septembro league sea, (1) Styllament leadenses, including the following late generally a sociality
- (ii) Accounting, Input, almost, and similar costs reasonably massesses for -
- (A) The preparation and preventable, actioning supporting that, of sentences claims to the contracting officer, and
- (B) The termination and settlement of subcontracts.
- (ii) Reasonable costs for the storage, transportation, profession, and custosition of properly acquired to produced for the contract.
- (a.) Indigree costs related to solarly and wages incomed as settlement capternes in (i) and (ii) normally, such indigest assist shall be limited to payto" taxes, frings benefits, occupancy costs, and immediate supervision costs.
- (2) If settlement expenses act significant it acts around or work order shall be established to separately identify and accumulate from
- (b) Subministrator classes. Adherent action aims, including the allocable pontion of the classes common to the contract and so other work of the contract. As penerally allowable. An appropriate share of the confusion's indirect expense may be allocated to the amount of voluments with spheromators: provided, that the amount account is the spheromators: provided, that the amount account is the other proportion with a distribution benefits merrived and is otherwise consistent with 31 201-4 and 31,303(c). The indirect expenses we allocated shall exclude the same and similar coals claimed directly or indirectly as will except expenses.

## 3).205-43 Trade, berimous, technical and professional activity costs.

For following types of costs are allowable

- (a) Memberships in trade, business, technical, and protessional organizations
- (b) Subscriptions to trace, housest professional of other technical periodicals.
- (a) When the principal purpose of a meeting, convention, conference, symposium, or seminal in the dissemination of trade, business, technical or professional, (cformation in the cumulation of preduction or improved product (1994)
- (1) Costs of organizing, terting up, and spottering the metungs, renventions, symptom, examine using rental of entering facilities, transportation, subastience, and includental costs;
- Costs of allerdance by contractor employees, including gravel costs (see 21,205-46), and
- (2) Copy of attendance by individuals who are not employees of the minimization province:—
- (i) Such costs are not also minibursed to the and setdual by the employing company or alganization, and

31-28 (TAC 97-02)

## PART 31—CONTRACTICOST PRINCIPLES AND PROCEDURES

31 205-45

(ii) The individuals alterdance is countial to schirve the purpose of the conference, meeting convention symposism into

## 31,205.44 Training and education costs.

- ja, wijowobie grove. Training and adminism, costs are allowable to the extent indicated below
- (a) We assented in partial. Closes of preparing and mantaining a controllege level program of instruction, including but not limited to out-the good flass nature, and apprentices to examing, does good to increase the vorte what effects of employees, are subsequent. These costs include—
- (1) Sularies of wages of trainees fettly drap assume enumerisation?
- (1) Salaries of the chordo of partial, and soff when the dwining program is conducted by the contractor.
- (5) Tuition and fees when the training is (1 on involution not operated by the contractor, antibot
  - (a) The ming materials and removable
- (c) Part time rollege level education. Althoughle cover of positione to lege otherwise at an undergraduate in Dest graduate level unclosing that grounded at the contractor's your fortunes, see limited to—
- (1) Free and faition charged by the educations institution, or instead of futicion, institution's valence onto the related start of indirect cost of the educational invitation to the extent that the sum thereof is not in excess of the technic that would have been paid to the probabiliting educational inkitition.
- (2) Salaries and releved costs or instruction who side employees of the contractor;
  - (3) Training materials and Institution and
- (a) Straight-time compensation of nath entitleyes for time spent accepting classes, during working hours not to excess of 156 hours per year where promissances do not permet the operation of players or attendance at a layers after regular working hours. In universal cases, the period due to extended two paragraph (a) of this subsection.)
- rg) Fall-time ediscution. Costs of tunion, feet, courting materials and teathbooks (but not yel-sistence, salary, or only offer emotiments) in coenection with fall-time constitutions that provided at the contractor's man factions, at a paragraduze but not added additional college length of all-with fall-times and on the fall of the field in which the course or degree personal are lated to the field in which the ringlesyee is working to may real sonably be expected to which and are littled to a total period not to eached 2 school years to the length of the degree program, whichever is less for each exployer so matech.
- (e) Sprinalized programs: Cooks of attendance of up to 16 which you comployed pre-year at specialized programs specifically designed in enhance the effectiveness of trianagers or to propose employees for such poyrisms are allowable. Such costs include employees for such poyrisms are allowable. Such costs include employees for such poyrisms are

charges and employees' salaries, solutionized training materials of gradients, and traver. Choos allowable under this paragraph to not include costs for control that are particular degree entented controlling which are only allowable pursuant to paragraphy (c) and (a) of the systematic

- (f) Other expenses. Moretenines expense and amost deposition or territorial on facilities owned or proved to the contractor to the ting purposes are allowable to be one dance with 31 205-11, 21 205-13, 30 205-14, and 31 205-36.
- (g) Geometric County to education to the industrial of the twest module by the canadian of facilities of the properties, which as high are followed up are considered contributions and the multiple state.
- The Administration of presents of the Training and indication, costs in cases of those interview allowable under pure graphs for integligible extension, obtained in subsection, as are so expenses and other embouragement of allowed in our extensive training appropriate order 11,106. The re-considered for an indication appearance that the costs of consistent interview of the costs of consistent interview for an indication of another an indication of another confident on program, and that the confidence degree pursuably indicated to the Lebit in which the employers of most work by a more recombility or respected to work. The functional method is the lebt in which the experience of the contents of
- $_{\rm CO}$  The length of equivarent solving with the contraction
  - (a) Employers post performance are potential.
- this Whether employers are it forms describ ment programs, and
  - (jv). The deal number of purpopulating CDQ 200500
- (2) Any advance agreement must include a provision requiring the contraction to related to the Government with a second many and education cover for expect easy who resign with the months of complete on of each CAD and in every about 1 & 103, some within an amplity of special of
- If Translag or information with for other times ones fall compayers. Costs of them, for the teather's, and should of related promits purvised for open that both first employee are that for white the tool of the amplitudes are that for exhibit on the times for obtaining employee population (primary and secondary feed studies) when the employee is working in a biologic country where public education is not available and where suitable provides much account in the accountry of the provides of the employee and the provides of the employee.
- j) Englishes dependent educative plana. Costs of college plans for employer dependents on analismable.

## 31 205-45 Transportation costs.

Altowable transportation costs into our fleight, exposicatogs, and gostage charges relating to provide purchased, in

### 31 203-46

science or delivered. When these costs can be identified with the trems involved, they may be directly desired as an ansponding, work or accept to the dost of such draws. When identification with the materials received country to make, into the transportation state may be charged to the oppropriate editectuate accounts if the contracts follows a consistent and implicate procedure. Cultimatel freight, if resmitusable interface the terms of the contract, shall be feedbacked as a direct the terms of the contract.

#### \$1,203,46 Travellensis.

- (a) Foots for incorporation melgins means, and justiclemal expresses 1.1 Cooks incorred by contraction personnel on official company bostness are althought scinject to the fortitations contained in this Consultant Cooks for transportation may be based on the eage rates, actual continuants or on a continuation through provided the method used results in a practicable charge. Costs the holping means and one octal expenses that he based on per dictionation of penses, or a coordination through provided the method used feasible to a maximable charge.
- (2) Biological as promided in subparagraphicals from this subsection, oversime circo as helping means and incidental exponency (as defined in the regular one circo in the 22 or through that) or this subparagraph) shall be considered, so or reasonable and allowable only to the extent that they do not world on a daily basis the maximum per diethirates of final at the time of travel as are form in the
- fig Federal Travel Regulation, presented by the General Services Administration, to travel in the copyright your 48 United States, available on a subscriptor basis from the:

Superintendent of Operanents 1-S. Consertment Penting Otton Washington, DC | 19907

Stock SS 177 BOX 000000.2

(ii) Junit Travel Regulator, Notable 2, Buffa Uncline Personnel. Appendix A, predicted by the Brytament of Delense the havel in Alexa, gravationthe Commonwealth of Punits Rich, and termonies and power-stops of the United States, available on a subscription basis from the—

Super Herder) of Decement U.S. Generation Photographics Wetherport, DC 25400

Stock No. 905-010-00005-11-or

7 or Standardized Regulations (Government Civilians, Foreign Aceas) Shifton 925, "Maximum Isokel Per Diem Allowaners for Foreign Areas," prescribed by the Pepartosent of Soirc, for irasel in dieus and covered in PEDERAL ACOUSTICON REQUIRED.

Conditional III of this subparagraph, as made on a selection passe beautiful.—

Superioration of Common U.S. Gracinetti, Francis Office Washington, Oct., 1982

\$1000 No. 144 (ces promo n

- (3) in special or investor structure, actual roots in Cacess of the absence for more making in per direct property allowable provinced that such accounts do not expect the higher amounts authorized for bridges on tun couplingers as parallel of the impolences referenced in an O(1) of the public on Too Auch Inglan amounts to be allowable, all of the subsection. For Auch Inglan amounts to be allowable, all of the bollowing conditions must be not
- (ii) Use of the conditions extracting approximate authors express method, as set tools in the reputations reserved in paragrapta tag 2,000 (10,000 million) of this subsection, what exist.
- (iii) A virturn justification for the higher amounts in, 4 or approved by an efficiency the contractor's organization of designed to ensure that the authority is propertie. Althousehold are invertibled in provent above.
- I the fifth occurrent declaration to exercise the agreed dy to use the higher actual expense method reportance; to on a continuous basis in a pain occur area, the contraction that obtains advance approval from the contracting officer.
- And Decumentation to copper active personal recurred shall be an accombined with the contractor's established speakings to represent supporting the expensional support of most subsection, and provided that a recorpt is imported for each rependiture or excess or \$25.00. The approvide justicitation required by (a)(3)(b) and, if applicable, (a)(3)(b) in the establishment of excessions and the establishment of excessions be retained.
- 140 Sciopzagraphs (artist under (from the subsection do not interpretate the reproducts open on subclickwess 2013 to (170), and (170), of the subsection in the monotonic Only the maximum per dieth action, the subfertion one of lodg org. Interly, and predicted expensions are the culture coverage dealing with opening or product substantials are to appeared from it.
- (5) An advance parsement (see N. 100) with respect to compliance with veloparagraphs (a)(2) and (a)(3) of this subsection into the north, and desirable.
- (6) The maximum per diety rates referenced to comparagraph (1972) of this subsection generally would not constitute a reasonable daily integri—
  - (ii) When no edging costs are incorrect and/or
- (a) On partial travel days tell, play of departure and return)

Appropriate disversion adjustments from the maximum per dism core would normally be required under those properstances. While these adjustments recoloud to calculated in

PART OF ACOMPRACT COST PRINCIPLES AND PROFETOGRESS.

31,009,47

accordance to or the Federal Travel Regulation to door. Travel Regulations they mad result in a travenette therem.

- (7) Costs sign the allowable only of the leff-owing information of Acutebook.
- (a) Date and place only more or other similar decignment of the enterior.
  - the Propose of the caption !
- 1 m. Name of pressor on top call (60) persons of or readouship to the composito.
- (b) Travel costs incomed more times, cost of control (1) more intimes of the Costress are allowable and districts against a matrice costs.
- (c) Travet assistant a uni Souble or greefe constant performance treix sweathering that Southarged to the observations of 1903.
- The Auritan Linds in excess to the several Linds of Statement of Edge, a cover the experiment at Turk offered, them a most of Subjects from the equivalent at Turk offered, them a most of collisions from the equivalent of the Linds and the edge of the forest continues reading to continue of the Linds are equivalent to statement, controlled the energy of them strong the most offered the edge of the ed
- reigity (Cost of irravel by contactor context, leaved, or a movered accurately as position this paragraph, or ludes the root of leave, etantes, operation controlling personnel contintenzing, depreciation, insulative, the other related and
- (2) The costs of basel by common research detailed or chanced aircraft are limited to the sundand a late. described in gwrzgraph (do of this subsection for the Right destroution priess make thy would uncreat its specifically remoral to correct space fination for the condition of a righer annual is approved by the uniquential misco. A higher amount may be agreed in which one or oxide of 15% preum refrees for justifying higher from standard entate hated in congraph (if) of this subsection for application of when an advance agreement under suppressiph (etth) of this subsection has been executed. In a carees travel his contraction-paired in events or suburtaneo accordio must be fully discussed and joy find. For each dentiactor-owned, langed on chartered promptional for any business corpose which is charged on a society dentity is indicately, to a Egyerapem contract, the compacts make plantage and make evaluate mandes/logs for no flights on such compages arrarate Asia menanggo the manifesting shall in:h.Je
  - it: Date, pine, and points of departure
  - incideg supportulate and time of arrival

- (j-1) Name of each passenger and relativist  $\tilde{\tau}$  to the contractor.
  - The Author/Spot for the ad-
  - two Purcose of trip
- (2) Were an absume appeared is proposed use 11,10% concerns on may be given to the following.
- in Wheney is scheduled about executing these or of an appropriate execution of the analysis of the schedule areas with resources correspondent and execution manifest destinations correctly and execution assumes the schedule.
- in Whether increased the option of executable test, to in the energy and into extent of each of proportion that would have each
- The Costs of comparison whether covered anto a bules, is used in this collegated, include the covered business reserves a methodrap performed. Intuitizative integer, and in the area of the covered at t

## 208-47 (Case related to legisland orbits provided maxima.

"Generalized, as used in this subsection, is different if S(D)

"Cowin" include, but are not limited to, admin visitor and cloneal expenses; the cook of logal services, whether performed by it have the precise occasion. By Common the control of the c

"Project," as least in this subsection, though

- (1) Acts of trace or complete is altered to be defined the dimensional or to corrupt its agents.
- (2) Auto which conseque a rater for deharters of a spread under 9,495 C at 2nd 9,495-3 at and
- (f) Active which violate the Pater Claims Activity S.C., aschines 3329-3721, or the Anti-Kirkhack Activity C.S.C., recovery Syland 54.

"Penalty," does not include next (a) on, by it removes to compensately through

"Proceeding," inclines un investigation

- the Cloud incurred in connection will laby programmy hought by a Federal, strict, loss on theorymy verification with name of the a tailure to comply with law or resulting by the contraction smoluting its agents in employeest of analysis of the result is
  - pay have mind processing weaver on

#### 31 205-47

- 12) In a c.v., or administrative proceeding, either a finding or contracted Lability where the proceeding involves a allegation of fraud or similar misconduct or imposition of a minimary penalty where the proceeding does not involve an allegation of fraud or similar misconduct.
- (3) A small decision by an appropriate official of se executive agency to—
  - (i) Debat or suspend the contractor:
  - (ii) Resente or vitial a contract; or
- (iii) Terminate a contract for default by leaves  $\sim^{c}$  a violation is failure to comply with a law or regular of
- (4) Disposition of the matter by consent of compromore if the proceeding result have sed to asy or the observed is subpreagraphs (b)(1) through (3) of this subsection (but see paragraphs (a) and (c) of this subsection), or
- (5) Not covered by subparagraphs (b)(1) through (4) of this subsection, him where the addedying allegno contracter measuration was the same as that which led to a different proceeding whose costs are anallowable by teason of subparagraphs (b)(1) through (4) of this subsection.
- (c) to the entent they are not otherwise unallowable, costs ideased in connection with any presenting under paragraph (b) of this subsection decompanyed by the United States that is resolved by convention compromise pursuant to an agreement efficient two between the contraction and the finned States, and which are unallowable witely because of largraph (b) of this subsection, may be allowed to the extent specifically provided in such agreement.
- (d) To the extent that they are not otherwise unall assable, coats incorrect in connection with any proceeding under passgraph (b) of this subsection commenced by a State, local, or foreign government may be allowable when the contracting officer (or other official specified); agency procedures) determines, that the costs were incorrect either.
- (1). As a direct result of a specific term or condition of a Federal contract,  $\omega$
- (2) As a result of compliance with specific whiten direction of the cognizant contracting officer.
- (c) Costs intimed :\* connection with proceedings described in paragraph (b) of this subsection, but which are not made unadiowable by that paragraph may be allowable to the extent tool;
- (1) The costs are reasonable to relation to the activities required to deal with the proceeding and the underlying cause of action.
- (ii) The costs are not otherwise recovered from the Federal Government of a third party, either directly as a result of the processing or otherwise; and
- (3) The percentage of costs allowed does not exceed the generalized determined to be appropriate considering the molecular of programment litigation, generally accepted.

## <u>FEDERAL ACQUIST</u>ION REGULATION

principles governing the award of legal free in civil actions obvolving the limited States as a party, and sociolated factors as may be appropriate. Such proporties shall indicate a 60 percent. However, if an agreement interned under sumption (c) of this subsequion has explicitly only detections an percent rule, there are full advant of costs resulting from that agreement shall be allowed to

- (f) Costs and covered elsewhere at the consequent are that owable it memoral in connection with:
- (1) Defense against Federal Government alatons or appeals or the presecution of claims or appeals against the Federal Government (see 33.201).
- (2) Obganization, reorganization procluding cheryers and adquisitions) or resisting integers and adquisitions (see also 31,505-53).
  - Dr. Defense of actions again
- (4) Defends of work brought by improves on exemployees of the concentration under section 2 of the Miljor Fraud Act of 1985 where the congruence was found here or world.
- (b) Costs of legs, accounting, and consultant services and density associated costs, reported in deconnation with the defense of presecution of lewsuch or appeals between contractors assing from exper-
- 111 An agreement of contract converting a jeans log amangement, a joint venture, so similar arrangement of shared interest; or
- (2) Dual sourcing, reproduction on similar programs, are unallowable process when
- (ii) Insurred as a result of compliance with speinstitutions and canadians of the contract or written institutions from the contracting officer, or
- (ii) When agreed to in Whiting by the contract ing officer
- (6) Paters infringement i tigation, or less otherwise provided for an the contract.
- (7) Repretentation of, or assistance in individuals, groups, or legal notities which the contractor is not legally bound to provide, ansing from an action where the participant was not inted of scalation of a lower regulation to was found liable in a civil or some assistance proceeding.
- (3) Protests of Foderal Coverantent sufficientials or contract sweeds, or one detense against process of such to detend on a contract awards, unless the costs of detending against a protest are incorred pursuant to a winder-request from the cognisary commanding officer.
- (g) Costs which may be unationable under \$1,205-41, secluding directly associated costs, whall be segregated and accounted for by the contractor organizate. Burning the perdently of any proceeding covered by paragraph (b) and subparagraphs (fixe) and (f)(f) or this subscriber, the contracting officer shall generally withhold payment of such state. However, if in the test interests of the Government,

## PART AT LICEN FRACT COST PRINCIPLES AND PROFILE RIS

the continguing officer may provide by conditional payment upon provision of adequate sections, in other adequate assumer, and appeared by the costractor of reportal atallity are costractor of region all atallity are costs, plus interior of the costs are subserpently determined to be small or after

## 51 205-48 Deferred revision and decelopment costs

"Hereard Canad development," as used in this subsection, means the type of treline at reflect which is described in \$1,305,13 but which is sponsored by or respect in participance of a constact or great. Research and days opposed exists including approximational objects that were incorrect before the award of a particular context, are unallocated except which a covering appropriate costs. To addition, when costs are incorrect in every of other the process a compact transmitted of a great for research as a decomposition of the except of the except of the costs. The additional action is a finite such assection to a finite such assection to the costs.

#### 31.205.49 Condwill.

Foodwall, an unidentificible artancials lossed, originality under the purchase method of occuming the above toxico-continuation when the price pacing the argumany company exceeds the form of the identificible above also making a submitted above as a submitted above to the relative product of a gradient continuation of the excess is commonly referred to as gradiently for excess in commonly referred to as gradiently as a shole in a portion thereof. Any toxis for commonly as expensing white-off, or write-allowed of productly though the represented; are analysis of

#### 31 205-50 [Reserved]

#### 31.205-51. Closus of alcoholic beverages

Copis of all challe bevoluges are unallowed a

## Asset valuations resolves from lusiness combinations.

When the purchase method of the conting to a business come roote is used, allowable and tractication core of money, and depreciation what we limited to the total of the amount that would have been adjoined but the appointment of taken plant.

## Nulpart 31.3—Contracts with Educational Institutions

#### 31,300 Purpose.

This subject passides the principles for determining Cochet of research and development. Daming, and other week performed by educational loss regions upder contracts with the Government.

#### 31.302 General.

Office of Management and Budget, OMB: Circular No. 6, 21, Cost Prior piec for Educational Institutions, revised, provides principles for differentially for costs applicable to research and development, training, and other work performed by advantaged in courters, other company with the Government.

#### 31 JUS Requirements.

(a) Contracts that refer to the Notpers \$1.5 for determining anomalds to its uncert contains with contribution promitting shall be desired to refer to, and shall have the abbreviating of cooks do an earliest by the contribution of from a recondition with the reference of OMB Country A 21 in effect on the date of the contribu-

 ch. Agencies are for expressed; option additional testion constraints, cidnal femological;

## Subparts M.A. and M.5. - Reserved;

# Subpart 31.6—Controlls with State, Local, and Federally Recognized Indian Tribial Governments

### 51 601 Purpose.

They althors provides the protopies for determining a lowable cost of contract and superconduction. State head, and findmal' supergrand Indian substitution of the

#### J1342 General.

Office of Management and Budget (CMH) Unradial Nation 7, Cost Pane alexant State and Local Consequents, Record, sate field the joiningle, for determining the allowable going of rooth one and substantials with State Theorems redeatly reorganized for an induly government. The organized are not dominant on an induly government in producing the area of the consequence of a corn and an industrial and State of Local partial patient in Johnson 7, a particular contains.

## 31 603 Requirements.

(a) Contacts that refer to this Adaptat of 5 for solvening allowable costs under communic with State, local are (when titled you expects shall be occurred to refer to 100, 400, 450 payment of 200 with the control of 200 with taking perfect in a confidence with the revision of 2008 Car Car A-A3 which is in effect on the date of the control.

th) Apopoles and resimply tell in clause 2001 contentions foliate in males as all opens of cost. However, couldn't 10 S.C. 2504te, and 4., 0.5 C. 2504te, the following costage anallowable.

 (1) Costs of entertainment, its costs amost real diverging, and own that to view and at a costs directly assists

31,701

## SPDERAL ACQUISITION RESCRIPTION.

and with such casts (such as tackets to show on spents events) means, budging, include, to inspectionen, and gratimes,

- (2) Covis incurred to influence (throutly or indirectly) localizative action in any matter pending before Congress, a State egislature, or a legislative body of a political conditionation of a Scale.
- (5) Cooks incomed in detense of any dividing sciential found proceeding or sinti-all posteroding 1 religing filling of any false destification) brought by the Dinied States where the contractor is found table in Nav plantor holoconsenders to a charge of found or similar proceeding (including lating of a folse certification).
- (4) Paychenty of fines and penalties resulting from stockings of, or failure to couply with, Follers', just a local, or foreign laws and regulations accept when incurred as a result in discriptioned with specific terms and conditions of the contract or specific written instructions from the contracting officer superities got in advance such payments in according officer superities got in advance such payments in according to with 20p. 220th regulations in the FAR on an esecutive agency supplication to the EAR.
- (5) Costs or any membership in any costst, or angior country club or oceanisation.
  - (6) Costs of a coholic beverages
- Contributions of donations regardless of the requier;
- $150\,$  Floris of acceptainty designed in permisor the consenter of its products
- [9] Costs of promotions, tiems and memorability metholog process, parts, and sometimes.
- (10) Costs for movel by commercial aircraft which exceed the amount of the standard community fige.
- (11) Costs moment in making any payment frammonly enternas a govern parachate payment ( which is—
- (i) Its as well-of nearest of the formal severance pay paid by the contractor to an amplityze upon transfer of of employment, and
- on the pool in the employee exert (year, upon and following, a chance to the against a control over, or experiences of the investment or a substantial policie of the standarders asset.
- (12) Costs of community invorance that projects against the costs of the constraint for correction of the constraints own celects of materials or west manylip.
- (14) Clock of severance pay paid by the contraction (one-printainonals employed by the contraction index a service cost tack performed possible the United States, to the extent that the ontoine of the severance pay paid in any case taceeds the amount paid in the individing modern, arger the destroid in in preventing practice for firms in that individing providing is Tidat services in the United States, as determined.

forfield by regulations in the FAR of to an executive agency supplement to the FAR.

(14) Colors of strictance pay baid by the contraction to a footige national employed by the contraction or order a contract contract positioned in a foreign occurrie. If the tenomiation of the employment of the foreign rational wither result of the closues of, or tong them on activities at a Utited States for my mithal country at the regions of the government of that country.

(15) Costs incomed by a contraction or connection with any ariminal costs of administrative proceedings commission by the United States on a State of the cogenity-covided in 10 CtS C (2324)\$ (a. 41 Ct S C (256 kg)).

## Subpart 31.7—Contracts with Nonprofit Organizations

#### 31.701 Purpose.

This subpart possible the principles for determining for cost applicable to work performed by non-profit occurring nonstrander contacts with the Covernment. A cooperafit organization, for purpose of identification to defined as a bounces entity occurred and operated are consely for chartable, attending or indicaptional purposes, or which in part of the non-exemings more to the banefit of any private specifielder or individual, of which no substituting part of the activation is earlying an produganda or otherwise attempting to influence legislation to particulating in my political carriaging on Sebalf of any condition for public orders, and which are exempt from Federal manner taxation under section 501 of the Internal Reservant Code.

#### 31 702 General

Office of Management and Budget (OMB) Chicalat Nat A 121. Cost Poncio es lan Norpeoffi Organizations, sets leads principles for differentialing the cross applicable to work performed by perform organizations under a missing or applicable to grants, and concernagements, with the Givernment;

### 31,783 Reguleements.

(a) Contents which refer to this autiquation. Filling determining at 0.4 able costs shall be desired to refer to, and shall be determined by the contracting officer in accordance with the revision of OMB C muturiA-122 in effect on the date of the contract.

the Agencies are not expected to place use houral restrictions (b). Edit industrients of cost (Bowerers, maker to 0.5 C, 2304(r) and 41 U.S.C. (2340), the costs ched in 31 800(b) are challowable.

and the second

31, 44